SIXTEENTH ANNUAL REPORT

OF THE

INTERSTATE COMMERCE COMMISSION.

DECEMBER 15, 1902.

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THE INTERSTATE COMMERCE COMMISSION.

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REPORT

OF THE

INTERSTATE COMMERCE COMMISSION.

WASHINGTON, D. C., *December 15, 1902.*

To the Senate and House of Representatives:

The Interstate Commerce Commission submits its sixteenth annual report for the consideration of the Congress.

The preliminary income account for the year ending June 30, 1902, further reference to which is hereafter made, compiles returns from railway companies operating 195,385 miles of line, or approximately 98 per cent of the entire mileage of the United States. From these returns it appears that the gross earnings of such companies for the period named amounted to $1,711,754,200, or an average of $8,761 per mile of line; their operating expenses aggregated $1,106,137,405, or an average of $5,661 per mile, leaving net earnings of $605,616,795, or $3,100 per mile. The item of taxes, amounting probably to $54,000,000, is not included in this statement of operating expenses. Compared with the previous year, the net earnings are greater by some $51,000,000 and the amount paid in dividends on stock greater by nearly $30,000,000. It is interesting to contrast this showing with the statistics for 1897, when the gross earnings averaged $6,122 and the operating expenses $4,106 per mile of line. As the rates, broadly speaking, were about the same in both years, it follows that the large increase in earnings resulted mainly from the increased volume of traffic. These figures furnish an indication of the great prosperity enjoyed by the railroads.

The tendency to combine continues to be the most significant feature of railway development. The facts in this regard are matters of common knowledge and little is gained by the mention of particular instances. It is not open to question that the competition between railroad carriers which formerly prevailed has been largely suppressed, or at least brought to the condition of effective restraint. The progress of consolidation, in one form or another, will at no distant day confine this competition within narrow and unimportant limits, because

the control of most railway properties will be merged in a few individuals whose common interests impel them to act in concert. While this will insure, as probably nothing else can in equal degree, the observance of published tariffs, and so measurably remove some of the evils which the act was designed to prevent, the resulting situation involves consequences to the public which claim the most serious attention. A law which might have answered the purpose when competition was relied upon to secure reasonable rates is demonstrably inadequate when that competition is displaced by the most far-reaching and powerful combinations. So great a change in conditions calls for corresponding change in the regulating statute.

AMENDMENTS TO THE LAW.

It is now nearly sixteen years since the passage of the act to regulate commerce, and more than thirteen years since it has been amended in any material respect. At the time of its adoption it was understood to be more or less tentative and experimental, and changes were anticipated as experience in its operation might show to be needful. The growth of railway systems in the last decade has been remarkable. The form and direction of this growth present questions of regulation which were not taken into account when the existing law was framed, and it is not surprising that its provisions have proved unequal, in some respects unsuited, to existing conditions. Obviously, the main purpose of the law was to prevent unreasonable charges and undue discriminations. The prevalence of these evils and their resulting injustice led to its enactment. The offenses which excited public indignation were prohibited and standards of conduct were prescribed which are founded on natural justice. In the principles declared there is no unsoundness or want of adequate statement. The defect is not in the rules formulated, but in the machinery provided for the enforcement of those rules. All the details of regulation incorporated in the act, its requirements as to publishing and filing tariffs and making annual reports, its methods for presenting complaints and conducting their investigation, its criminal remedies, the authority of the Commission to make orders founded on ascertained wrongdoing, and various other administrative features, were designed solely to give effect to its substantive provisions and thereby secure to the public reasonable charges and impartial treatment.

If the actual operation of this law and the efforts of the Commission to make it effective had disclosed only minor and incidental defects, if its leading purposes had been fairly attained and its expected usefulness realized, the Commission might be excused from repeating its recommendations for amendment. This is not saying that the law is of little value or has failed to bring about important reforms. On the contrary, it has furnished a considerable restraint upon the carriers

subject to its provisions and promoted in a substantial degree the ends which it was designed to secure. Nevertheless, its inadequacy as a remedial measure was long ago discovered, and further trial has illustrated the various respects in which it is insufficient. While its purposes are clearly beneficent, and while the principles which it embodies are more and more seen to be correct and salutary, the means devised for giving practical effect to its mandates are concededly imperfect. That this imperfection is curable is equally conceded. The fullest power of correction is vested in the Congress, and the exercise of that power is demanded by the highest considerations of public welfare.

Were it deemed possible to add weight to previous recommendations or to emphasize the need for their prompt adoption, this portion of our report might be greatly extended. It is not believed, however, that this subject can be more forcibly presented or the situation more clearly explained than has been done in former reports. If the representations already made do not induce favorable action it is certainly not the fault of the Commission. A sense of the wrongs and injustice which can not be prevented in the present state of the law, as well as the duty enjoined by the act itself, impels the Commission to reaffirm its recommendations for the reasons so often and so fully set forth in previous reports and before the Congressional committees. Moreover, in view of the rapid disappearance of railway competition and the maintenance of rates established by combination, attended as they are by substantial advances in the charges on many articles of household necessity, the Commission regards this matter as increasingly grave and desires to emphasize its conviction that the safeguards required for the protection of the public will not be provided until the regulating statute is thoroughly revised.

INJUNCTION SUITS.

Investigations undertaken by the Commission in December, 1901, and January, 1902, showed that rates upon grain and grain products and packing-house products were in a most demoralized condition. These investigations were touched upon in our last annual report, and the details need not be repeated here. While the Commission had previously understood that these rates were not maintained and had made frequent attempts to obtain positive information upon the subject, it had until then met with little success.

The evidence secured in the course of these investigations proved beyond doubt the general fact that the traffic in question had habitually been carried at less than published rates, and disclosed as well the methods by which the lower and unlawful rates were accorded. It did not, however, disclose the facts in this regard relating to any particular shipment. This was partly because the purpose of the Commission was primarily to develop the general features of the situation,

and for the further reason that more detailed proof could not be obtained without calling numerous witnesses implicated in the illegal transactions, all of whom would have been granted immunity from prosecution by requiring them to testify. This provision of the law, based upon a constitutional right, must always be taken into account, since the result of compelling testimony from those who have participated in committing misdemeanors—of which ordinarily no innocent person has knowledge—may be to relieve from all liability the very persons whose guilty conduct is most deserving of punishment. Since the Commission can do no more in applying the criminal remedies provided by the act than to aid the officials charged with that duty, it feels under some constraint to avoid enforcing disclosures which would furnish immunity to those who ought to be prosecuted.

Nevertheless, as the giving of secret rates is a criminal offense, and as it is the duty of the Commission to submit evidence of such misconduct to the proper prosecuting officers, a copy of the testimony taken in these investigations was transmitted to the Attorney-General and to the United States attorneys of the several judicial districts wherein the wrongful acts appeared to have been committed with a request to them to institute and prosecute suitable proceedings under the direction of the Attorney-General; and an attorney familiar with the matters involved was employed by the Commission to assist the Department of Justice.

The best and most prudent course to pursue was sufficiently doubtful to require consideration. The criminal sections of the act are seriously defective and inadequate, as the Commission has repeatedly pointed out in previous reports to the Congress. For this reason it was at least questionable whether criminal prosecutions were appropriate or likely to accomplish a useful purpose under the circumstances disclosed by this inquiry. Believing that little or no relief could be hoped for from criminal proceedings, in which opinion the Department of Justice concurred, the Commission considered whether it might not be practicable to attain the desired end by another method; and accordingly, after consultation with the Attorney-General, a plan of action was decided upon which will be briefly outlined in the following paragraph.

Some years ago a suit had been commenced at the request of the Commission, in the name of the United States, to restrain a carrier from violating the provisions of the act against discriminations in published rates, and it seemed possible that the same remedy might be applied to compel the observance of published rates. Although that suit was commenced in 1893 and prosecuted with reasonable diligence, no decision from the Supreme Court of the United States had been obtained. The right contended for had, however, been sustained by

the lower courts, and it was thought advisable, in view of the extensive and unquestioned violations of law which the investigations disclosed, to proceed without waiting for a final determination of that case. Application was accordingly made to the Federal courts at Kansas City and Chicago, asking that the railways implicated be compelled by mandatory process to observe their published schedules, the following railways being made parties to these proceedings: Atchison, Topeka and Santa Fe; Chicago, Rock Island and Pacific; Chicago, Milwaukee and St. Paul; Chicago, Burlington and Quincy; Missouri Pacific; Chicago and Alton; Chicago & Great Western; Michigan Central; Lake Shore and Michigan Southern; Pennsylvania Company; Pittsburg, Cincinnati, Chicago and St. Louis; Chicago and Northwestern; and Illinois Central. A restraining order or preliminary injunction was granted against all these carriers in March, 1902, and has since continued in effect. The case is set for argument before the circuit court on the 15th of this month.

The proceedings thus instituted are suits in equity, brought in the name of the United States, to restrain by injunction the several carriers mentioned from granting or applying any other rates than those announced in their published tariffs, though each of them remains free to change its published tariffs at any time in the manner and upon the notice provided by the act. These suits have been vigorously and ably conducted by the proper district attorneys, under the immediate direction of the Attorney-General, and with the aid of the counsel employed by the Commission as above stated. This explains why no convictions have been obtained or indictments found on account of the disclosures in question, and emphasizes what we have so often said heretofore, that, in the absence of suitable amendment, the criminal features of the present law are practically a dead letter.

The railroads against which these restraining orders were granted are among the most important in the sections in which they operate. The injunction applies not only to grain and packing-house products, but to all commodities. Since a single railway can not maintain the rate unless its competitor does, and since these lines compete for traffic in substantially all parts of the country, it follows that a maintenance of rates upon the lines under injunction must of necessity tend to a general maintenance of rates throughout the entire United States. It is asserted, and the Commission believes, that these railways have obeyed the injunctions, in the main if not altogether; that published rates have been exacted upon their lines, and very generally by other lines in competition with them. It can hardly be doubted that a very much better condition has existed for the last nine months in this respect than for any corresponding period in the last twelve years at least.

Whether a continuance of the injunctions would work a continuance

of this condition is not entirely certain. We are inclined to think it would, to a considerable extent at least, not only because departure from the published rate can be more easily and summarily dealt with in injunction proceedings than by criminal indictment, even under the most perfect law, but also because of concentration in the control of railway properties and the lesson which past experience has taught railway managers. The right to proceed in this manner to restrain violations of the act is evidently of great value, but attention is called to the fact that the right to so proceed is disputed and resisted. While railroad managers, as a rule, are believed to have welcomed these injunctions as applied to the maintenance of rates, the principle involved is stoutly contested in the case now pending before the United States Supreme Court. Congress has the undoubted power to invest Federal courts with this authority, and it would relieve the present uncertainty if an enactment to that effect could be had at the present session.

It is natural to inquire what has been the effect of these injunctions upon all parties interested—the carrier, the shipper, and the public. It was asserted that secret preferences in favor of particular individuals enabled those individuals to control the traffic and necessarily drove out other competitors, the general effect being to force small dealers out of business. Whether small dealers have been able to resume business, or what the effect of the injunctions may be upon the manner in which business is transacted, the Commission has at present no information; nor has sufficient time probably yet elapsed for any definite answer to that question.

The effect of these restraining orders upon actual rates can be spoken of more intelligently and with greater confidence. In our former report to the Congress these rates were, for convenience, divided into three sections—those from Chicago to the seaboard, from Kansas City to Chicago, and from Kansas City to the Gulf. Following this division we find these changes in the rates mentioned:

On January 1, 1901, both the domestic and the export rate on flour and other grain products from Chicago to New York was 17½ cents per 100 pounds. The domestic rate on grain was the same, 17½ cents, while the export rate was 16 cents. On June 1, 1901, these rates were reduced from 17½ cents to 15 cents and from 16 to 13½ cents, respectively, so that during the summer of 1901 rates upon grain products, both domestic and export, were 15 cents, while upon grain they were 15 cents domestic and 13½ cents export. October 21, 1901, these rates were advanced to the same figure at which they stood on January 1. It must be remembered, however, that while these were the published rates, the testimony before us showed that there was a concession of approximately 3 cents per 100 pounds from these rates; that this concession was known to most shippers and was practically applied to all transportation.

After October 21, 1901, the rate continued 17½ cents, both domestic and export, upon grain products, except that in carloads exceeding 35,000 pounds an export rate of 15 cents was applied. The rate of October 21 also continued in effect with respect to grain, save that on May 21 an export rate of 13½ cents was published, applicable to shipments when consigned through to foreign ports. These published rates since the granting of the injunction have been observed. It will be seen, therefore, that since the issuing of the restraining orders the published rate as applied to most grain movements from Chicago to the Atlantic seaboard, for the New York rate determines all these rates, has been substantially 2½ cents higher, and the actual rate some 5 cents higher. These rates were further advanced by tariffs effective December 8, 1902, another 2½ cents per 100 pounds.

The only published rate in effect January 1, 1901, from Kansas City to Chicago was 19 cents upon wheat and flour and 16 cents upon other varieties of grain; but grain and grain products habitually moved, ostensibly upon the balance of the through rate, actually upon whatever rate the shipper could obtain by private contract with the carrier. The testimony before us showed that this rate varied greatly with the stress of competition, having been during the summer of 1901 as low as 5 cents per 100 pounds, the average being, perhaps, 7 cents or thereabouts.

On January 1, 1902, a proportional rate of 12 cents from Kansas City to Chicago was applied to all kinds of grain and grain products. July 1, 1902, this was reduced to 7 cents upon wheat and flour, being retained at 12 cents upon other kinds of grain. August 9, 1902, the rate upon all kinds of grain and grain products was made 7 cents, which on September 15 was restored to 12 cents upon wheat and flour, and 11 cents upon other grain and grain products; and by tariffs effective December 15 these rates are to be advanced 2 cents. The effect here of the injunctions has been to compel carriers to publish the rate on which this traffic moves, and to render that rate much more stable. It is impossible to say whether the published rates in effect have been more or less than the actual rates charged under the old régime. While they remained at 11 or 12 cents they were undoubtedly higher. On a 7-cent basis they were probably about the same on the average. The new rates of 13 and 14 cents will be a very decided advance.

The so-called proportional rate from Kansas City to the Gulf is the basis upon which all rates from the grain fields to Galveston and New Orleans are made. That rate, with some slight exceptions for short periods, has been since January 1, 1901, 15 cents per 100 pounds. September 15 last the rate upon grains other than wheat was reduced to 14 cents, which it is now, December 10, 1902. The testimony showed that a concession of about 3 cents per 100 was granted particular shippers, who handled, however, practically all the grain. The

actual rate, therefore, has been that much higher since the issuing of the injunction than it was before. These rates are also to be advanced December 15, 1902, 2 cents per 100 pounds.

The published rate upon packing-house products from Chicago to New York, both export and domestic, from January 1, 1901, to March 26, 1902, was 30 cents. On the latter date the export rate was reduced to 25 cents, where it now remains. The testimony showed that a concession of 5 cents was regularly given upon export business, and that to this was sometimes added 1 or 2 cents more. It would appear therefore that the rates actually exacted upon these commodities since the restraining orders are substantially the same as before. With dressed meats it seems to have been otherwise. The export and domestic rate upon this commodity is the same, and was January 1, 1901, 45 cents. This was reduced July 29 to 40 cents. January 1, 1902, it was raised to 45 cents, and March 26, 1902, reduced to 40 cents. It appeared from the testimony that there had been during the year 1901 a concession of about 5 cents per 100 pounds, while the rate was 45 cents, and of some 4 cents per 100 pounds after the rate was reduced to 40 cents. It apparently follows therefore that the actual rate applied to dressed meats since March 26 last has been approximately 5 cents per 100 pounds greater than that exacted during the corresponding period in the previous year. These rates are to be advanced 5 cents per 100 pounds, effective January 1, 1903.

Dressed-beef rates from Kansas City to Chicago were during the year 1901 nominally 23½ cents per 100 pounds—actually about 18½ cents. January 1, 1901, the published rate was reduced to 18½ cents, and that rate has been in effect since, so that here, while the published rate has been reduced, the actual rate is the same. It is understood that one line from Kansas City to Chicago has contracted with certain packing houses at Kansas City to transport their product for a period of five years at not exceeding this figure, and if this contract is persisted in that rate can not be advanced.

Our general conclusion is, therefore, first, that the immediate effect of these injunctions was to advance on these commodities the rate received by the carrier and paid by the shipper, to the extent that published rates were higher than the rates actually charged; second, that their operation, by enforcing the published rate, may in the present condition of railroad ownership enable advances in actual rates to be effected which would not otherwise be made and maintained. The producer of grain will undoubtedly pay more to transport that grain to destination than he had paid for some time before these injunctions took effect. To what extent this is the result of the restraining orders the Commission can not determine; but even if they were the sole cause it would not be an argument against the injunctions, since everyone concedes that carriers should publish their rates and maintain them

when published. It does show, however, that there ought to be some power, in court or commission or elsewhere, which can not only compel carriers to maintain the rates they publish, but also compel them to publish fair and reasonable rates.

PUBLICATION AND FILING OF TARIFFS.

In the Eleventh Annual Report of the Commission the subject of "Construction, publication and filing of tariffs" was discussed at some length, and the principal defects in tariffs as then published and filed, including the various ways in which such tariffs failed to comply with the law and the orders of the Commission, were pointed out.

It may be stated that the defects and irregularities in the construction of rate schedules which were shown to exist at that time (December, 1897) are still prevalent, though in a less degree than formerly. Failure on the part of carriers to file tariffs in time to give the Commission legal notice of changes in rates is still of quite frequent occurrence, although in this respect also there has been noticeable improvement since the date of the report above mentioned. An average of about 3 per cent of the total number of tariffs filed fails to reach the Commission in time to give the previous notice required by law. These failures are traceable in many cases to carelessness on the part of the employees of carriers whose duty it is to attend to the mailing of tariffs. The most frequent cause for such failures, however, appears to be that sufficient time is not allowed for transmission, the tariffs in the majority of such cases reaching the Commission one day short of the required time.

All tariffs received, before being placed in the files, are examined as carefully as the limited clerical force available for such work will allow, and the attention of carriers immediately called to any defects or irregularities in their construction that may be observed, and also to failure to give the Commission legal notice of changes in rates or other disregard of statutory requirements that may be noted in the necessarily hasty examination of the tariffs. In this way much improvement has been accomplished, and while, as before indicated, many tariffs now filed are defective in various ways they are as a whole more nearly in conformity with the law than at any previous time.

In one important respect the improvement in rate schedules has fallen far short of what could be desired or expected; that is, in respect of simplicity of construction and clearness of application. The law contemplates that all tariffs posted by carriers for public inspection shall be in such form as to be readily intelligible to the ordinary shipper, and while it is true that the majority of tariffs are so constructed as to be readily comprehended by almost any one, there are many tariffs covering important traffic so complicated in construc-

tion and in which the application of the rates is so imperfectly shown that it is often very difficult for even a tariff expert to correctly determine the rates therefrom. A forcible illustration of the point in question occurred at a recent hearing before the Commission when the traffic manager of one of the largest railroad systems in the country, in reply to a question, admitted that he was unable to state from a tariff published by his own company the rate on a given article between given points, although the rate regarding which the inquiry was made was intended to be shown in the tariff which he held in his hand. Such a tariff is, of course, not the kind of a tariff the statute contemplates. In ascertaining the rates on certain traffic from tariffs on file with the Commission, it has, on numerous occasions, been found necessary to telegraph the publishing carrier for information relative to their intended application.

In this connection may also be mentioned tariffs which, while not specially complicated in themselves, are rendered so by the issue of a large number of supplements, sometimes to the extent of a hundred or more. To ascertain the correct rates from such a tariff is necessarily a tedious process, as all supplements or amendments must be examined in order to determine what changes have been made in the rates originally published in the tariff.

Tariffs such as described above are no doubt responsible in a large measure for the great number of overcharges which occur and which, on the larger roads, necessitate the employment of a considerable force of clerks in the claim department for the purpose of adjusting claims arising from errors of agents. It is unquestionably true that a large number of undercharges also occur from the same cause, and as these in most cases are not subsequently adjusted the carrier is a loser in revenue to the extent of such undercharges.

The cost of publishing tariffs constitutes quite an item of expense in conducting the business of a railroad, and it appears that complicated tariffs and those which have been excessively amended, such as alluded to above, are the result, in most cases, of efforts to save expense in clerical labor and printing. It appears probable that the clerical force employed in the rate and tariff departments of most carriers is inadequate to perform the amount of work required in a careful and proper manner, the consequence being that various devices are resorted to for the purpose of lessening the work, which is usually accomplished at the expense of simplicity and clearness. A tariff just filed is a fair illustration of such methods. This tariff, in many cases, does not name the actual rates to be charged nor the points of destination. Figures are given which are to be deducted from the rates named in other tariffs (which are not in all cases specifically referred to) in order to determine the rates. Other tariffs must also be examined in order to ascertain the points to which the rates are intended to apply. About seven

other tariffs must be consulted before all the rates and points intended to be covered can be determined. The following item taken from this tariff is an example of the method adopted:

Canned goods, C. L., as described in tariff ——, from Chicago, Pekin, Peoria, Ill., and Mississippi River points to all stations in Kansas, Nebraska, and Colorado, 12 cents less than fifth-class rates, except where present rates are lower.

The tariff as published contains three pages besides the title-page. If it contained all of the actual rates to be charged and all of the points from and to which the rates apply, it would contain probably twenty or more pages. It will be seen that a very considerable saving in clerical labor in preparing the matter for the printer and in the expense of printing the tariff has been accomplished in the publication of this tariff, but the tariff as published would be of no use to a shipper.

The claim is often made by carriers that shippers never make any use of the tariffs which are required by law to be posted in their stations. This is no doubt true, and it is possible that it might also be the case if the tariffs were in such form as to be readily comprehended, but under present conditions it is certainly not surprising that shippers do not attempt to determine the rates for themselves from the posted tariffs.

As the rate schedules form the basis from which railroad revenues are derived, they are of the greatest importance, and it seems apparent that the exercise of very rigid economy with respect to preparation and publication of same, resulting in complicated and, in some cases, unintelligible schedules, is most unwise. It seems equally apparent that a liberal policy in regard to this essential matter, thereby securing the most efficient clerical force for the preparation of the tariffs, and the printing of same in such form as to be readily comprehended by anyone of fair intelligence, would be the wisest policy, as the tendency of such a policy would be to save loss of time and prevent errors on the part of agents, thereby avoiding to a great extent the occurrence of overcharges and undercharges on freight.

What is said above is intended to show that the exercise of a liberal policy in connection with the preparation and publication of rate schedules is the wisest course from the carrier's standpoint, but it should be borne in mind that the law requires these schedules to be printed in such form as to be plain and comprehensible to the ordinary shipper, and it is therefore the duty of all carriers to see that their tariffs are so published, regardless of whether such a course would result in gain or in some additional expense.

Another source of considerable confusion and consequent errors in the determination of rates from tariffs as filed with the Commission is the practice of many carriers of having in force at the same time a large number of separate tariffs between the same points or groups of points. It frequently happens that different tariffs are found on file which are

apparently at the same time in force and which name different rates on the same commodity between the same points. When this occurs, it is of course necessary to call upon the publishing carrier for information as to the actual rate in use. Where tariffs are published with due regard to the requirements of the law no such conflict as above described can occur, and no doubt can arise as to the rate in force on a given article between given points.

Even where there is a general class and commodity tariff in force between certain points, when it becomes necessary to issue rates on other commodities, or to make changes in the rates named in the general tariff, such issues are often made in the form of separate tariffs instead of being made supplementary to the general tariff, so that they can be attached to and made a part thereof.

Some carriers publish all rates, both class and commodity, between the same points or groups of points in one general tariff, which is republished at intervals of two or three months, thus avoiding confusion and loss of time in ascertaining rates resulting from the accumulation of a large number of supplements or amendments. It is usually a matter of only a few minutes to accurately determine the rate on any given article between points where such tariffs are in force. It is realized, of course, that it may not be always practicable to carry all rates between the same points or groups of points in one general tariff, but the number of separate tariffs at the same time in force between such points should be limited as far as possible.

Carriers sometimes adopt unusual and confusing methods in the publication of certain rates for the purpose of misleading their competitors and preventing them from ascertaining the rates which are charged on certain commodities between certain points. A case in point is the following: Several years ago a certain carrier, operating a line between important points in competition with a number of powerful rivals, decided to put in force such reduced rates on certain important commodities as would, for a while at least, give it a virtual monopoly of the traffic on such articles. In order to do this it was necessary to adopt some plan that would prevent its competitors from learning of the existence of the reduced rates for some time, otherwise they would be instantly met and no advantage would accrue therefrom. The plan adopted for the purpose of accomplishing the desired end was unique. The rival carriers soon began to suspect from the increased movement over this line that concessions in rates were being made. The suspected carrier, however, claimed that the rates it was charging on the traffic were published and filed with the Interstate Commerce Commission. Inquiries elicited the reply from the Commission that no tariff had been filed making reduced rates on that particular traffic.

Among the tariffs published by the carrier in question was a large general tariff which contained nearly all the class and commodity rates

in force over the road, and also had printed therein the Western and Official classification in full. The three general classifications are printed by the chairmen of the Official, the Western, and the Southern classification committees, and are filed with the Commission by them in behalf of the members of the respective committees. The classifications so printed and filed do not contain any rates, but provide the class or rating which articles mentioned therein shall take, the individual carriers publishing and filing the tariffs which name the rates for the various classes of freight provided for in the classifications, and specifically referring to the particular classification by which the rates are to be governed. The classifications as printed in the tariff above referred to were probably not used by anyone other than the agents of the company. After a considerable time it was discovered by one of the competing carriers that interspersed at various places among the items of these classifications were the reduced commodity rates which had been the subject of so much inquiry and discussion. These rates were at once withdrawn, but in the meantime the carrier had thereby secured a large volume of traffic. The claim that the rates which were being used were published and on file with the Commission was true, but can it be seriously claimed by anyone that rates published in this manner in any wise meet the requirements of the law, either in spirit or in letter?

Another matter which seems to deserve notice is the practice resorted to by certain carriers on frequent occasions in the past of making changes in rates without giving the statutory notice and the attempt to defend such methods as not being in conflict with the law. The method adopted in case of an advance in rates, where the date decided upon for the advance to take effect does not allow sufficient time to publish the new rates and have them in the hands of the Commission ten days before becoming effective, is to issue a cancellation notice canceling the existing rates effective ten days from the date of filing such notice. In some cases the cancellation notice provides that after the cancellation becomes effective combination of local rates will apply, while in other cases no announcement is made as to what rates will thereafter be in force, leaving it to be inferred that combination rates would apply. Usually three days before the cancellation notice becomes effective new tariffs are filed, which are advances over the rates canceled, and are made to take effect the day after the expiration of the existing rates. The invariable argument advanced in defense of this method is that the new rates are lower than the combination of locals which would become effective in case no other rates were issued, and are therefore a reduction and require only three days' previous notice. It will be seen at once that this is not the method prescribed in the statute for making advances in rates, and that if rates can be advanced in this manner it would never be necessary to give the Com-

mission more than three days' previous notice of the rates actually to be put in force. The point overlooked by the carriers in such cases is that the law provides that when advances in rates are made the rates which are to take the place of those at the time in force must be in the hands of the Commission ten days before they can be made effective. This matter has been the subject of a large amount of correspondence, with the result that this method of making advances in rates is seldom resorted to at the present time.

Some time ago a number of roads adopted the plan of putting in force without previous notice reduced rates which were found to be in force between the same points over the lines of their competitors. It was contended that this was not a violation of the law, as the rate adopted was already in force between the points and that therefore no new conditions were created. The Commission pointed out to such carriers that there was no justification in law for making reductions in rates without giving the three days' notice provided in the act, even though the rate which was to be put in force was already in effect over some other line; in fact, that such action was a plain violation of law. No instances of this practice have been observed within the past few months.

FORMAL PROCEEDINGS BEFORE THE COMMISSION.

In our last annual report to Congress it was stated that 19 formal proceedings had been commenced before the Commission during that year. Since December 1, 1901, 38 proceedings of that character, double the number brought in the preceding year, have been instituted before the Commission. These cases directly involve some of the rates and practices of 300 carriers. Following is a short statement of the complaints and provisions of the law claimed to be violated.

No. 608. Investigation by the Commission in the matter of consolidations and combinations of carriers subject to the act to regulate commerce, and the method of the associations known as "community of interest" plan.

No. 609. Rates on carload shipments of lumber to Charlestown and Boston, Mass., Keene, N. H., and Tarrington, Conn., greater from Sheridan than from Indianapolis, Ind. Reparation claimed. Sections 1, 3, and 4.

No. 610. Unreasonable and unjust freight rates to Leadville, Colo., from Missouri River points and points east thereof. Sections 1, 2, 3, and 4.

No. 611. Unreasonable and unjust rates on carload shipments of ice from Norvell, Hillsdale, Bankers, and other points in Michigan greater for the shorter distance to Springfield than for the longer distance to Columbus, Ohio. Reparation claimed. Sections 1, 3, and 4.

No. 612. Unreasonable and unjust rates on crude or fuel petroleum oil from Pecos, Tex., to Roswell, N. Mex., and from Amarillo, Tex., to Roswell. Sections 1 and 3.

No. 613. Freight rates from Boston, New York, Philadelphia, and Baltimore greater to Chattanooga than to Nashville, Tenn. Sections 1, 3, and 4.

No. 614. Discrimination and prejudice against Kansas City, Mo., in rates on grain from Kansas and Nebraska to and from Kansas City and through to Southern and Eastern markets. Sections 1, 2, and 3.

No. 615. Discrimination against Central Stock Yards in favor of Bourbon Stock Yards in Louisville in matter of shipments and delivery of shipments of cattle. Sections 2 and 3.

No. 616. Unreasonable and discriminating rates on milling-in-transit shipments of corn and corn products from Western points to Boston and other New England points. Reparation claimed. Sections 1, 2, 3, and 6.

No. 617. Prejudicial and unreasonable rates on lumber from Fountain Head, Gallatin, Pilot Knob, and St. Blaise, Tenn., to Detroit, Mich., as compared with rates from Nashville. Sections 1, 3, and 4.

No. 618. Unreasonable and unjust rates on live stock in carloads from points in Iowa, Missouri, Minnesota, and Wisconsin to Chicago, Ill., as compared with rates on dressed meats and packing-house products. Sections 1 and 3.

No. 619. Unreasonable and excessive rate on shipment of two cows and a calf from Newport, Vt., to Pawtucket, R. I. Sections 1, 2, and 3.

No. 620. Unlawful class and commodity rates from Cairo, St. Louis, and East St. Louis to Tupelo, Aberdeen, Westpoint, Starkville, and Columbus. Sections 1, 3, and 4.

No. 621. Investigation by the Commission in the matter of rates and practices by the Mobile and Ohio Railroad Company in the transportation to Vicksburg, Miss., of grain shipped from or through St. Louis or East St. Louis.

No. 622. Investigation by the Commission in the matter of the transportation of immigrants from New York and other Atlantic ports to Western destinations.

No. 624. Greater rates on grain and grain products from Wichita, Kans., than from Kansas City to Galveston, Tex., and New Orleans, La. Sections 1, 2, 3, and 4.

No. 625. Prejudicial regulations in closing freight stations in Cincinnati, Ohio, as compared with similar regulations in other cities. Section 3.

No. 626. Discrimination in rates on lumber and shingles in carloads from Minnesota Transfer to St. Louis and Chicago when such shipments originate at Seattle or other points in Washington, in favor of shipments originating in the State of Minnesota. Sections 1, 2, and 3.

No. 627. Prejudicial and unreasonable rates on coal in carload lots from Minden, Mo., McAlester, Ind. T., and Russellville, Ark., to Wichita, Kans. Sections 1, 2, and 3.

No. 628. Prejudicial rates on bananas in carload lots from New Orleans, La., to Wichita, Kans. Sections 1, 2, 3, and 4.

No. 629. Discriminating rates on sugar from Rocky Ford and Sugar City, Colo., to Wichita, Kans., in favor of Kansas City, Mo. Sections 1, 2, 3, and 4.

No. 630. Discriminating rates on lumber in carloads from points in Arkansas, Texas, and Louisiana to Wichita, Kans., in favor of Kansas City and other points. Sections 1, 2, 3, and 4.

No. 631. Investigation by the Commission in the matter of alleged unlawful rates and practices in the transportation of coal and other commodities between points in the territory north of the Ohio River and east of the Missouri and Mississippi rivers.

No. 632. Unreasonable storage charge on sugar at Macon, Ga. Sections 1, 3, and 6.

No. 633. Unreasonable storage charge on molasses at Columbia, S. C. Sections 1, 3, and 6.

No. 634. Relative rates on flour and wheat from Wichita and other points in Kansas and Missouri to points in Texas. Sections 2 and 3.

No. 635. Unreasonable through rates from St. Louis, Mo., to Mansfield, Leesville, and other points in Louisiana, and Marshall and other points in Texas. Sections 1, 2, and 3.

No. 636. Unreasonable and prejudicial freight rates from Dayton, Cleveland, Detroit, and Pittsburg to Wichita, Kans., as compared with rates to Oklahoma City, Okla. Sections 1, 2, 3, and 4.

No. 637. Freight rates from Boston, Providence, New York, Philadelphia, and Baltimore greater to Charlotte, N. C., than to Norfolk, Va., Wilmington, N. C. and other points. Sections 1, 2, and 3.

No. 638. Freight rates from Chicago, East St. Louis, Ill., St. Louis, Mo., Cincinnati, Ohio, Louisville, Ky., Nashville and Memphis, Tenn., to Charlotte, N. C. Sections 1, 2, 3, and 4.

No. 639. Unreasonable storage charge on molasses at Columbia, S. C. Sections 1, 3, and 6.

No. 640. Rates on buggies from Rock Hill, S. C., to Tallahassee, Fla., as compared with lower rates to Quincy, Fla. Sections 1, 2, 3, and 4.

No. 641. Passenger rate from Boston, Mass., to Janesville, Wis., as compared with lower rate in the opposite direction. Sections 1, 2, and 3.

No. 642. Unjust classification of blacking daubers. Sections 1, 2, and 3.

No. 643. Pooling of freights by Southern railways. Section 5.

No. 644. Unreasonable and prejudicial rates on anthracite coal in carloads from points in the anthracite coal region of Pennsylvania to New York City, Boston, Washington, and other Eastern points. Sections 1, 2, and 3.

No. 645. Investigation by the Commission in the matter of transportation of dressed poultry in refrigerator cars by the Wabash Railroad Company.

HEARINGS AND INVESTIGATIONS.

Hearings and investigations of alleged violations of the act to regulate commerce have been had at general sessions of the Commission at its office in Washington, D. C., and at special sessions held in Kansas City and St. Louis, Mo., Chicago, Ill., New York and Buffalo, N. Y., Louisville, Ky., Chattanooga and Nashville, Tenn., Leadville, Colo., Columbus, Miss., Wichita, Kans., Detroit, Mich., Indianapolis, Ind., Cincinnati, Ohio, Charlotte, N. C., and Providence, R. I.

The formal proceedings so heard and investigated involved the following matters:

Investigation in the matter of transportation of dressed meats and packing-house products. Investigation in the matter of consolidations and combinations of carriers subject to the act to regulate commerce, and the method of the association known as "community of interest" plan. Investigation in the matter of rates, facilities, and practices applied in the transportation, handling, and storage of grain and grain products carried from Western points to Atlantic seaboard and other Eastern destinations. Rates in both directions between Denver, Colo., and the Pacific coast, and between Denver and the East. Classification of pamphlets, almanacs, circulars, and other printed advertising matter in first class. Discrimination against central stock yards in favor of Bourbon stock yards in Louisville in matter of shipments and delivery of shipments of cattle. Investigation in the matter of rates and practices by the Mobile and Ohio Railroad Company in the transportation to Vicksburg, Miss., of grain shipped from or through St. Louis or East St. Louis. Investigation in the matter of transportation of immigrants from New York and other Atlantic ports to Western destinations. Rates on live stock in carloads from points in Iowa, Mis-

souri, Minnesota, and Wisconsin to Chicago, Ill., as compared with rates on dressed meats and packing-house products. Freight rates from Boston, New York, Philadelphia, and Baltimore to Chattanooga, Tenn., as compared with those to Nashville, Tenn. Class and commodity rates from Cairo, St. Louis, and East St. Louis to Tupelo, Aberdeen, West Point, Starkville, and Columbus. Milling-in-transit privilege and rates on shipments of corn and corn products from Western points to Boston and other New England points. Investigation in the matter of alleged unlawful rates and practices in the transportation of coal and other commodities between points in the territory north of the Ohio River and east of the Missouri and Mississippi rivers. Freight rates to Leadville, Colo., from Missouri River points and points east thereof. Rates on grain and grain products from Wichita, Kans., to Galveston, Tex., and New Orleans, La., as compared with rates from Kansas City. Relative rates on flour and wheat from Wichita and other points in Kansas and Missouri to points in Texas. Rates on coal and slack in carload lots from Minden, Mo., McAlester, Ind. T., and Russellville, Ark., to Wichita, Kans. Rates on lumber in carloads from points in Arkansas, Texas, and Louisiana to Wichita, Kans. Rates on sugar from Rockyford and Sugar City, Colo., to Wichita, Kans. Rates on lumber from Fountain Head, Gallatin, Pilot Knob, and St. Blaise, Tenn., to Detroit, Mich., as compared with rates from Nashville. Rates on carload shipments of lumber from Sheridan, Ind., to Charlestown and Boston, Mass., Keene, N. H., and Torrington, Conn. Passenger rates from Boston, Mass., to Janesville, Wis., as compared with lower rate in the opposite direction. Rates on live stock in carloads from points in Iowa, Missouri, Minnesota, and Wisconsin to Chicago, Ill. Closing of freight stations in Cincinnati, Ohio, as compared with closing of freight stations in other cities. Passenger fare from Niagara, on the lake, to Buffalo, N. Y. Rates on carload shipments of ice from Norvell, Hillsdale, Bankers, and other points in Michigan greater for the shorter distance to Springfield, Ohio, than for the longer distance to Columbus, Ohio. Freight rates from Boston, Providence, New York, Philadelphia, and Baltimore to Charlotte, N. C. Freight rates from Chicago, East St. Louis, Ill., St. Louis, Mo., Cincinnati, Ohio, Louisville, Ky., Nashville and Memphis, Tenn., to Charlotte, N. C. Rate on a shipment of two cows and a calf from Newport, Vt., to Pawtucket, R. I.

CASES SETTLED AND DISCONTINUED.

The following cases have been settled through concession of relief by the carriers or agreement of the parties.

A case brought under the telegraph act of August 7, 1888, and alleging discrimination through failure to furnish telegraph facilities to a firm of brokers, was dismissed on motion of counsel for complain-

ants after being assigned for hearing at Chicago. Counsel asserted they did not deem the petition sufficient, and moved a dismissal of this proceeding to the end that a new one may be instituted.

A case involving excessive rates on crude or fuel petroleum oil from Pecos and Amarillo, Tex., to Roswell, N. Mex., was settled by the carriers adjusting the rates to the satisfaction of complainant.

Another case arising at Seattle, Wash., involving rates on lumber and shingles from Minnesota Transfer to St. Louis, Mo., and relative rates on lumber and shingles from same point of shipment to Chicago, was likewise settled by the carrier reducing the rate to the satisfaction of complainants.

A case originating at Collins, Ohio, in which it is alleged that discriminating rates are enforced on carload shipments of dressed poultry from points in Ohio to Boston and Springfield, Mass. Evidence in this case was taken at Cleveland, Ohio, in April and October of last year, and it was finally submitted, but the case was dismissed on motion of the complainant.

In addition to the foregoing, a case involving an unreasonable storage charge at Columbia, S. C., on ten barrels of molasses shipped from New Orleans, was dismissed because the proper carrier had not been made a defendant. A proceeding was instituted.

DECISIONS OF THE COMMISSION.

Many important questions arising in contested cases have been decided during the year. The questions so decided by the Commission are summarized as follows:

DENYING SHIPPERS THEIR CHOICE OF ESTABLISHED ROUTES.

Two cases, one brought by the Southern California Fruit Exchange and the other by the Consolidated Forwarding Company, against the Southern Pacific and Atchison, Topeka and Santa Fe systems, known as the "Orange Routing Cases," were decided by the Commission on April 19 last (9 I. C. C. Rep., 182). The important question disposed of in this decision was whether initial carriers can lawfully reserve to themselves the routing of shipments and deny the shipper his choice of established routes. The Southern Pacific and Atchison, Topeka and Santa Fe systems are initial carriers of oranges shipped from southern California to eastern destinations, and, in connection with numerous other carriers, have formed through routes and fixed joint through rates for the carriage of oranges, lemons, and other citrus fruits grown in southern California and forwarded to consignees in other States. It is possible under such arrangements for through carriage over connecting lines to send traffic from California over different routes to practically all points on and east of the Missouri River and also to many destinations west of that river. The defendant initial carriers have in

effect a common tariff on citrus fruits from southern California shipping points to the Missouri River and points east thereof which fixes a single or blanket rate of $1.25 per 100 pounds, and names 183 participating roads. Thirty-one carriers in southeastern common-point territory are also named in connection with a note referring to another tariff for application of rates to points in that territory. Prior to about January 1, 1900, the complainants and other shippers in southern California were permitted by the initial carriers to select the routes over which their shipments should be carried to eastern destinations, but since that time each of these initial carriers has enforced a rule whereby it reserves to itself the routing of all shipments of citrus fruits destined beyond its own terminals. Such action on the part of the defendant carriers was claimed to be unlawful by the complainants in these proceedings.

At common law carriers are required to follow the instructions and directions given by shippers whenever practicable, but the defendants' contention in these cases was that joint through routes and rates are made by agreement between connecting carriers, and that such routes and rates are to be regarded as open to the public only upon such conditions as may be specified under the agreement; and they pointed out that upon the traffic under consideration the through rate was guaranteed only upon condition that the routing should be absolutely and unqualifiedly in the control of the initial carrier. The decision of the Commission was as follows:

Joint through routes and rates are ordinarily the subject of agreement between the participating carriers; but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use.

Under section 6 of the act two kinds or classes of routes are recognized and provided for, namely, the line of a single carrier, and a continuous line or route operated by more than one carrier, where the participating carriers establish joint tariffs of rates or fares or charges for such continuous line or route; and in respect of both classes of lines or routes the provision is uniform that established rates shall not be increased except after ten days' notice, nor reduced except after three days' notice.

In the matter of rates for these classes of lines or routes the provisions of the law differ in no respect except one, and that is merely that the Commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous lines or routes, while as to the other class such requirement is specified in the law itself. Such exception does not go to the form, substance, maintenance, or application of the rates in any degree whatsoever; and the Commission has, by order duly made March 23, 1889, prescribed that carriers by such continuous lines or routes shall pub-

lish their joint rates in the same manner as separate or individual roads are required by law to do.

Under the practice of defendants as initial carriers in joint continuous routes of reserving to themselves exclusive control of the routing and denying to shippers any choice or control in a selection as between different established routes, a route or tariff may be available to one shipper but not to another and open one minute to a shipper but closed the next; this to be determined by the carriers' agents according as they may desire to distribute the shipper's business among one another from time to time or for any reason whatsoever. This practice of defendants whereby shippers are denied the use of their transportation facilities by established routes is in violation of the statute, and, in its application by the defendants to the traffic in question, subjects the owners and shippers thereof to undue, unjust, and unreasonable prejudice and disadvantage, and gives to the carriers undue and unreasonable preference and advantage.

The effect of the application of the rule was further discussed by the Commission in its decision as follows:

The Commission has permitted a practice whereby an initial carrier may publish and file schedules of joint through rates over such through routes as it may designate therein, naming as parties to the same such and as many consenting connecting carriers as it may choose whose roads could form part or parts of any one or more of such through routes. Each of the many and varying practical through routes under such a schedule is, however, as separate and distinct as if it were the only one. Each is, in its entirety, without discrimination, in every instance equally as available under the law to every shipper as to the initial carrier. If it were otherwise, this method of forming and notifying by one tariff schedule many continuous through routes, which has been sanctioned largely at the instance of the carriers and for their convenience and economy, could be perverted to the overthrow of one of the highest aims of the law—equality among all shippers. A wide field would be laid open for rank discrimination and gross injustice. The law requires the establishment and publication of rates on all routes. Therefore there can be no through route without through rates thereon. Such rates may be the combination or sum of the local or separate rates of the several roads forming the through line, or they may be, and usually are, as in this case, less. So long as the through route exists the rates established thereon are guaranteed by command of the law itself to every shipper without discrimination, and no greater guaranty can be given by the initial carrier, as is insisted by the defendants in these cases as a basis for the claim of the exclusive control of routing by the initial carrier.

The very essence of the continuous joint line authorized by law is its availability to shippers for through transportation. The law pro-

vides for no such thing as a conditional route; neither can there be conditional routes constructed upon a condition such as is attempted to be enforced in these cases without promoting the very thing which the law was intended to prevent—undue and unreasonable discrimination.

In view of the terms and objects of the law, the use and function of transportation lines, and established rates thereon, it is a contradiction to say that schedules filed as in these cases create on the one hand many through continuous lines, each and all open at all times to the initial carrier, but none of which is at any time open or available to the shipper except in the varying discretion of such carrier. To what end is it sought to give the initial carriers of this traffic exclusive, continuing control thereof to destination in defiance of the wishes and instructions of the owner and shipper of the property? The chief reason assigned by the defendants appears to be that it diminishes opportunity for successful arrangements between the shippers on the one hand and carriers and refrigerator car companies on the other for rebates. It does appear that after the control of all routing was taken over by the defendants and away from the shippers, the practice of paying rebates practically ceased. This, however, is not all. It further appears that a tonnage pool of this traffic as between the connecting carriers not defendants was established and that the defendants so control the routing as to give specific percentages of this traffic to their several connections, thereby fulfilling and giving effect to this unlawful and forbidden arrangement.

Reason is found in the facts shown for the belief that the suppression of the practice of allowing rebates was only an incidental result and was not the primary or principal object of the defendant carriers in taking over to themselves control of the routing beyond their respective roads, but that the object was to give effect to the tonnage division before stated between their connections. The testimony shows that the rebates had not been paid or borne by these defendants, but largely by the owners of the refrigerator cars in which the fruit was shipped, and in part by Eastern connections. It is strongly significant also that in respect alone of this freight (the only traffic shown to be covered by the tonnage division arrangement and none other in the whole range of varied commodities and classes of traffic) do the defendants assume to dictate its movement beyond their own roads, as between the established continuous lines. It seems an indefensible proposition that a vital right of the shipper shall be sacrificed and violation of one important provision of the statute shall be fostered, in order to induce obedience to another. The use of the shipper's property in this manner and to this end is as if it were seized upon, marshaled, and maneuvered by the initial carriers for distribution among connections for their own advantage and to satisfy such con-

nections, and thereby hold up rates by unlawful methods regardless of the rights of the owners of the property handled and used for these purposes. The carrier is a bailee of the property which is in its custody for the purpose of transportation only, and it can not lawfully wrest from the owner that general control and direction of the same which is deemed by him needful for the prudent protection of his own property and interests and not inconsistent with the due performance of the service undertaken by the carrier.

Moreover, in respect of this traffic, shippers are required to release the carriers from liability for damage by the weather, decay, shortage, and delay. They are also required to prepay or guarantee freight charges to destination. So that the carriers are relieved of the care and risk on this property as to their customary lien on freight for the collection of their charges, which, on shipments of this traffic, must be paid whether the goods bring a sufficient amount for that purpose or not. Neither does the initial carrier assume liability for damage resulting from the negligence of any connecting line. Hence, for such damage the shipper must seek recovery from such connecting carriers in distant States. One of the reasons frequently advanced against the compulsory formation of through routes by carriers is that they might thereby be forced to make traffic arrangements and interchange freight with insolvent connections; yet in the present cases the shipper may, under the rule in question, be compelled to seek recovery of damages from an insolvent connecting carrier over whose road his traffic has been routed contrary to his express direction, or one that does not promptly or fairly adjust damage claims. His property may be shipped over a line composed of several short roads, whereas he may desire, and it might be to his substantial benefit, that the same should move over a through line composed of one or two roads, the management and service of which are efficient and satisfactory.

Another deprivation of right generally supposed to be vested in the shipper is found in these cases in the inability of the shipper to divert his freight in transitu to a point where the market conditions become favorable after transportation of the shipment commences. If the new destination is not upon the route substituted by the carrier for the route designated by the consignor, the shipper can not avail himself of its advantages. Under these various conditions the shipper is practically stripped of all protection and put to commercial disadvantage.

It is not a sufficient excuse for the practice under discussion to say that the first carrier's control of the routing beyond its rails must be so exercised as not to unduly discriminate. The granting of a given routing to one and denial of the same to another is itself an unjust discrimination. If injury or damage result in such a case, where is the remedy if the carrier acted within its lawful discretion? The

statute, though condemning undue and unreasonable discrimination in all cases, has done more—it has prescribed rules of action, and among others those in relation to established and open routes and rates intended to prevent discriminations.

A further ruling by the Commission in these cases was that carriers are left by the law to procure equipment for their business by lease as well as otherwise, and that they are not prohibited from leasing cars belonging to a shipper, nor are they compelled to contract in this respect with all shippers because they do with one.

Other questions involved in the proceedings were whether defendants pool their citrus-fruit traffic or divide the earnings therefrom, whether the blanket rate of $1.25 per 100 pounds upon oranges and other citrus fruits from southern California to points on and east of the Missouri River, and the minimum carload weight of 26,000 pounds, are unjust or unreasonable, and whether the statute applies to the charges for refrigeration, and, if so, whether such charges are unjust or unreasonable. These questions were retained by the Commission for further hearing and investigation. It should be added that one member of the Commission did not concur in the decision and filed a dissenting opinion.

The carriers refused to obey the order of the Commission, and thereupon a suit to enforce the order was brought by the Commission in the United States circuit court for the southern district of California. A demurrer to the petition of the Commission was filed by the carriers, and the case was set down for argument on December 4 of the present year.

THROUGH ROUTES AND THROUGH RATES. DISREGARD OF PUBLISHED TARIFF.

In November last the Commission decided the case of the Diamond Mills, of Buffalo, N. Y., against the Boston and Maine Railroad Company (9 I. C. C. Rep., 311). In this case it appeared that the Boston and Maine Railroad Company was a party with other carriers in establishing a joint through route and joint through rate on grain and grain products from Western points to Boston and other destinations in New England, and that the rates on grain and grain products were the same. One of the initial carriers permitted grain to be milled in transit on its line under a penalty of 1½ cents per 100 pounds and allowed the milled product to be forwarded under the balance of the through rate, in this case to points in New England on the Boston and Maine road. The Boston and Maine declined to permit grain so milled in transit to be carried at the through rate from the point of origin of the grain to ultimate destination at the through rate provided for grain, and on all such milled products received by it imposed an arbitrary of 6 cents per 100 pounds. The complainant contended that in so refusing to receive and carry such grain products at the through rate and in

imposing the 6-cent arbitrary the defendant acted in violation of the act to regulate commerce, and complainant sought to recover reparation for such alleged excess charges upon shipments, aggregating 34 carloads.

The question was one of considerable pecuniary importance to the complainant, since if all lines east of Buffalo, where complainant's mill is located, were to adopt the rule enforced by the Boston and Maine, it would seriously injure complainant's business.

It appeared that the grain originated at various points in the West and was delivered at various points in New England, but for illustration it may be assumed that the point of origin was Chicago and the point of delivery Boston. If a single railroad extended from Chicago to Boston, and that railroad published a rate like the present on corn and the same rate on meal, the Commission held that the shipper could not, as a matter of right, stop a carload of corn at an intermediate point, grind it, and send it on to destination at the through rate. It is universally understood that the right of milling in transit is a special privilege for which extra compensation is usually exacted, and which is only permitted under certain terms and conditions. The question was therefore reduced to this: Must the Boston and Maine Railroad recognize the private arrangement which existed between the complainant and the Lake Shore and Michigan Southern Railway, in virtue of which the complainant, for a certain sum paid that company, was allowed to mill its corn in transit?

The line between Chicago and Boston is composed of several different railroads, which have united to form a through route and to establish a through rate. At common law no obligation rested upon carriers to form such routes. Their formation was matter of contract, and each carrier was free to enter into the contract or not, as it elected. As interpreted by several Federal courts, this rule has not been changed by the enactment of the act to regulate commerce. The Commission said that if the establishment of this through line and through rate is a matter of contract between the different railroads composing it, it seems clear that the Boston and Maine Railroad may decline to become a party to that arrangement unless the terms and conditions are satisfactory to it. There was nothing in the joint tariff which gave the right of transit milling. The defendant notified its immediate connections that it would not permit that practice, and it notified the complainant to the same effect. We held that in so doing it acted within its legal right, and that this Commission has no power to direct otherwise. We further said, however, that this must not be construed as a condemnation of milling in transit. The fundamental idea involved is very generally recognized in railway operation, as in the reconsignment privileges accorded to many commodities, the milling of grain, dressing of lumber, floating of cotton, etc. In one case the Commis-

sion approved the latter practice, and doubtless in many instances the application of the principle is of great benefit to the public.

A complete system of interstate railway regulation would probably give the regulating body authority to determine when privileges of this kind should be accorded, and upon what terms, for they all enter into and are really a part of the rate; but no such authority is conferred upon this Commission by the present act. Still less should it be understood that railway companies can in the granting of this and similar privileges discriminate unduly between shippers, localities, or commodities. The record in this case showed no such discrimination. The record did show, however, that there was in effect a joint rate on grain products to which the defendant was a party of 12 cents per 100 pounds from Buffalo to Boston. The complainant milled its grain at Buffalo, and the shipments of grain products in this case, in fact, originated at Buffalo and moved from that point, and this being so it must be treated as having moved under this established rate of 12 cents per 100 pounds. The Boston and Maine could not, certainly, in the absence of some statement to that effect in its schedules, impose an arbitrary charge for some fancied delinquency upon the part either of the shippers or of its connections. It must apply the established tariff. We held, therefore, that it acted unlawfully in imposing the arbitrary charge of 6 cents per 100 pounds in addition to the through grain rate on complainant's milled products forwarded from Buffalo, and that it was and is bound to apply on such transportation from Buffalo its established joint rate on grain products from that point to New England destinations. The complainant was awarded reparation in the sum of $358.81, which represented the difference between charges exacted from it on the basis of the 6-cent arbitrary added to the through grain rate and the sum of established rates on grain to and on milled products from Buffalo.

DIFFERENCES IN TRANSCONTINENTAL CARLOAD AND LESS THAN CARLOAD RATES—BLANKET RATES.

A case of great importance as affecting shipping interests in the East and on the Pacific coast was that brought by the Business Men's League of St. Louis against the Atchison, Topeka and Santa Fe Railway Company and other carriers operating over the various through routes from St. Louis, Chicago, and other points in the Middle West (9 I. C. C. Rep., 318). The Commission rendered its decision in November of the present year. The complaint was directed, first, against the rate disparities on west-bound freight caused by lower rates to Pacific coast terminals, such as San Francisco, Los Angeles, and Portland, than to intermediate points on the same lines; second, against the blanket rates prevailing from all territory east of the Missouri River to Pacific coast destinations; and, third, against the differ-

ences between carload and less than carload freight rates, a system of varied commodity rates on similar articles of traffic, and a further rate adjustment whereunder numerous kinds of like freight could not be shipped in mixed carloads, all of which resulted from a tariff put in effect by the carriers in June, 1898.

Several large jobbing firms and commercial organizations in the Middle West, representing jobbing interests in that territory, intervened in favor of the complainant, and the Pacific Coast Jobbers and Manufacturers' Association intervened on behalf of the defendants. The case developed into a contest between the Middle West jobbers on the one side and the Pacific coast jobbers assisting the defendant carriers on the other.

The question as to the legality of the higher charges to intermediate points than to the more distant Pacific coast terminals was not litigated at the various hearings which were held in St. Louis, Los Angeles, San Francisco, Portland, Seattle, and Washington, nor was it pressed by complainant upon the argument, and it was therefore not a proper subject for consideration upon the record as made. So far as could be judged from mere inspection of the tariff sheets, these intermediate rates appeared in many instances to be unduly discriminative, but nothing could be gained by expression of an opinion not based upon a knowledge of all the facts.

As to the blanket rates prevailing on traffic shipped to the Pacific coast from all points on and east of the Missouri River, it appeared that graded rates, that is, rates lower than those from New York and decreasing as the shipping point might be farther west, were formerly in effect; but we held that such showing merely of less distance and that graded rates had formerly been permitted was not, in view of the established fact that water competition compels low all-rail freight rates from New York to San Francisco and other Pacific coast terminals, sufficient to warrant an order requiring lower rates from St. Louis, Chicago, and other interior points than from New York on traffic carried to Pacific coast destinations. This scheme of making rates from shipping points in the east is radically different from that which prevails at destination points in Pacific coast territory. Because of water competition the rate to the Pacific coast terminal is added to the local back from that terminal to make the rate to the intermediate point of destination, while as to points of origin in the east the rate from intermediate points is as low as the rate from New York. Applying this principle of water competition in the east exactly as it has been applied upon the Pacific coast, rates to terminal points from the east would be lowest from the Atlantic seaboard and would gradually increase toward the interior until some point was reached at which the rate so constructed equaled a reasonable rate by the direct rail route. If that theory of rate making which has been sanctioned by the courts

and by the Commission in some cases were applied to this territory east of the Missouri River, the rate from St. Louis to San Francisco would be, not lower than that from New York, as complainant insists, but higher, unless the direct rail rate from St. Louis to San Francisco ought reasonably to be less than the rate established from New York by water competition.

That the same system is not in force in both the East and the West is due to differing conditions in those sections. Upon the Pacific coast the great cities and the strong commercial interests are located at the seaboard. There are no interior towns of sufficient strength to insist upon a change of this policy, and apparently there never can be so long as the present system continues in force. In the East this is otherwise. Formerly manufacturing was mainly done upon the Atlantic seaboard, but to-day great cities have grown up and great commercial enterprises have developed in the Middle West, and these demand an entrance to the markets of the Pacific coast in tones which can not be disregarded.

Still more important is the situation of the carriers themselves. Those lines which distribute upon the Pacific coast control the adjustment of rates into that section, and their interests are united to maintain the present system. Indeed, it is declared that to reduce intermediate rates to a level with terminal rates would bankrupt these lines, and it certainly would have a most serious effect upon their revenues. In the East, however, we find many important systems beginning at the Missouri River or in the Middle West, and it is for the interests of these systems that traffic should originate at the eastern termini of their respective lines. Not only do they obtain more for the transportation of traffic so originating than they obtain from their division upon traffic originating farther east, but they also build up the industries of these localities and therefore remove them from the sphere of water competition.

The same question was passed upon by the Commission in Kindel et al. *v.* Atchison, Topeka and Santa Fe Railway Company et al. (8 I. C. C. Rep., 608). In that case Denver claimed that it was entitled to a lower rate to Pacific coast terminals than the rate from points on the Missouri River and east. We said that if these carriers extended the low water rate of New York west to the Missouri River they must carry it still farther to Denver, but that we could not affirm upon the mere score of distance that the rate from Denver should be lower. We did not, however, decide in that case nor in this that circumstances and conditions might not be such as to require a lower rate from the nearer point. If in this case the industries of St. Louis and the Middle West showed that they were, by this adjustment of tariffs, excluded from the markets of the Pacific coast their complaint might merit different consideration. But such is not the fact; on the contrary, it

appears that in recent years, under the influence of the rate complained of, the industries, both manufacturing and jobbing, of the Middle West have made steady gains upon the Pacific coast.

We also said that this decision would not in any way interfere with the rights of the transcontinental lines to put in effect, if they saw fit, such a system of graded rates as the complainant asked for, and that the carriers may or may not at their option meet the low water rate from New York. It is also for the manifest interest of those lines beginning at Chicago and points west to maintain lower rates from there than from the seaboard, and if in the future such rates are established they will not be in violation of the act to regulate commerce.

That branch of the complaint most discussed both in testimony and upon the argument was the alleged discrimination by the tariff of June 25, 1898, against the jobber of the Middle West in favor of the jobber upon the Pacific coast, which discrimination, according to the complainant, was accomplished by too wide a differential between carloads and less than carloads, by the application of improper varied commodity rates and by the refusal to permit shipment in mixed carloads. Of these three things the differential was by far the most prominent.

Most traffic from the East to the Pacific coast moves upon commodity rates. Of these rates nearly one-half name for the same commodity a carload and less than carload rate, about one-third apply in any quantity, making no distinction between carloads and less than carloads, while the remaining one-sixth apply to carloads only, leaving the less than carload shipments to move under the class rate. The differential between carload and less than carload is all the way from nothing to $1.50 per 100 pounds; perhaps in some instances even greater. Many of the differentials are exactly 50 cents, and this was found to be approximately the average differential.

In disposing of this branch of the case the Commission found the facts concerning, and in its conclusions discussed, the difference in the cost of handling carload and less than carload freight at the terminals and over the long distances involved in the proceeding, the history of railway rates to the Pacific coast as affected by rate wars and water competition, the influence of water competition upon carload freights and upon less than carload traffic, the situation and the relative advantages and disadvantages of the Pacific coast and Middle West jobbers in doing business under the rates in question, and the interests of consumers in Pacific coast territory. The case as submitted referred to the lawfulness of the tariff as a whole and the propriety of the general principles which underlie its construction. The complainant contended that these differentials, averaging 50 cents per 100 pounds, were too wide, that the motives which induced the tariff were wrong, and that the general effect of the tariff was to discriminate against the jobber of the Middle West and to injure the consumer upon the Pacific coast.

Viewing the case in this broad sense, we found that the differentials are not abnormal when compared with others in different parts of the country at the present time; that they are not greater than those in effect under the west-bound transcontinental tariff of 1893, and not greatly disproportionate to the actual difference in cost of service. Considering them with respect to their bearing upon the parties immediately interested, namely, the carriers and the two classes of jobbers, we found that they conserve the interests of the carrier; that they give to the jobber upon the Pacific coast a measure of advantage to which he is perhaps entitled by his location, and which he must probably have if he is to continue to exist, while they permit the jobber of the Middle West to transact a considerable amount of business in this territory at a reasonable profit. Viewed as an economic problem, the tariff appeared to foster that method of distribution which is probably the cheapest upon the coast, and at the same time permits reasonable competition and thereby secures to the customer the full benefits of such competition. This situation is in some sense the outgrowth of past experience, it is satisfactory to most interests upon the Pacific coast, and we were not disposed to find fault with the adjustment of rates as a whole.

While, however, we could not condemn this tariff as a whole upon the grounds put forward by the complainant, we held that many of its details were in violation of law. Over 400 commodity rates apply to carloads only, leaving the movement of these commodities in less than carloads to be governed by the class rates. This produces a differential which, even under the peculiar circumstances of this traffic, is in many cases excessive, provided there be any commercial reason for a corresponding less than carload rate. In some instances there is none. Coal, for example, moves usually in carloads and takes a low commodity rate. What little movement occurs in less than carload lots is not competitive with carload shipments, and may well be governed by the class rate, although the difference between the two would otherwise be undue. We were impressed, however, from an inspection of the schedules that there were still many other instances in which the difference was altogether too great. Still, it was impossible to fix any standard by which these differentials should be determined, for the reason that circumstances often render the application of a greater differential proper in one case and not in another. Many of the commodity rates showed a differential of 50 cents per 100 pounds as between carloads and less than carloads, and the cost of handling the less than carload traffic was found to exceed the cost of handling carload traffic by about 50 per cent. The Commission held that a differential which is at once more than 50 cents per 100 pounds and more than 50 per cent of the carload rate is prima facie excessive. This did not mean that every differential may lawfully equal this, nor

yet that every differential which exceeds this is unlawful, but that a differential exceeding this requires special justification. We also held that certain varied commodity rates, especially in the hardware schedule, were to some extent unlawful, and that the tariff under consideration unduly prevented in some instances the shipment of articles of the same class in carload lots at carload rates. For example, it was difficult to understand why sheet iron, all thicknesses, should not be shipped together in carloads.

It is one thing, however, to pronounce a tariff wrong and quite another to say what will be right. While we were clearly of the opinion that many of these differentials are too great, that the varied commodity rates in the hardware schedules, and perhaps in some others, should be readjusted, and that in some instances greater latitude should be given in the shipment of mixed carloads, we had no facts before us from which we could intelligently determine what ought to be done in specific instances. The great mass of testimony went to the general aspects of the controversy rather than to details. We concluded, therefore, to set the case down for further hearing at St. Louis on the second Tuesday of February, 1903. This will give the carriers time to readjust their tariffs in accordance with suggestions in the opinion, and we provided that if before that date the complainant should notify us that no further hearing is desired the complaint would be dismissed; otherwise we would at that time require the attendance of the traffic officials of the various transcontinental lines and endeavor to obtain such information from other sources as would enable us to make an intelligent order in the premises.

The question of the higher rate to intermediate than to terminal points in the Pacific coast territory was also kept open for further hearing if the complainants should so desire.

One member of the Commission filed a dissenting opinion.

RATES TO PACIFIC-COAST TERMINALS AND INTERMEDIATE TERRITORY.

In the case of Shippers' Union of Phoenix, Ariz., against the Atchison, Topeka and Santa Fe Railway Company and others (9 I. C. C. Rep., 250), the decision of the Commission was filed in May, 1902. The complaint was that freight rates between New York, Chicago, and St. Louis and other Eastern points and Phoenix were unjust and unreasonable in themselves, and relatively as compared with rates on like traffic between New York and such other Eastern points and Los Angeles. The Santa Fe and Southern Pacific systems reach Los Angeles, Cal., a point to which rates from the East are affected by water competition. Phoenix, Ariz., is not upon either of these through lines, but is connected therewith by two lateral lines, one on the north connecting with the Santa Fe at Ash Fork and one on the south connecting with the Southern Pacific at Maricopa.

The Commission held that when water competition permits the establishment of classifications and rates below the rates to noncompetitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter distance points—like Phoenix—not affected by such competition, and that there is no evidence in this case upon the reasonableness of the rates to and from Phoenix, except comparison with Pacific coast rates.

It was also determined in this case that the evidence was insufficient to constitute the basis of a decision requiring the defendant carriers to modify their long-standing system of rate making, which also applied over other transcontinental lines throughout a great belt of territory and affected numerous localities and interests which had not been heard in the proceeding, and this being so, the relief sought by the complainant was for the present denied, but the case was retained for further consideration, pending the investigation and disposition of other cases involving the same general question.

CONTRACT RATES LOWER THAN THOSE SPECIFIED IN THE PUBLISHED TARIFFS.

In the case of Red Cloud Mining Company against the Southern Pacific Company (9 I. C. C. Rep., 216) it appeared that complainant shipped a carload of machinery from Erie, Pa., to Salton, Cal., and alleged an agreement with an agent of the Southern Pacific Company for a rate to Salton as low as any rate which would be charged by any other route or carrier from Erie to Los Angeles.

It is a rule of the carriers, appearing upon the transcontinental tariffs, to make rates to an interior and intermediate point like Salton by a combination of the special commodity rate to Los Angeles plus the local back to Salton, when that combination would make a lower charge to Salton than the class rate to that point. The charges on the carload of machinery in question were made in this way—the commodity rate to Los Angeles was added to the local rate from Los Angeles to Salton. The rate actually applied, therefore, was the regular tariff rate in effect at the time this carload was transported.

It was claimed that the lower commodity rate to Los Angeles is forced upon the carriers by water competition between Atlantic coast points and Pacific coast terminals, and the fact of such competition was virtually admitted. The general fact respecting such competition has also been shown in various cases before the Commission. There was no evidence that the aggregate amount charged on the shipment was unreasonable, and it could not be so found in the absence of proof.

The decision of the Commission was that the rate imposed upon this shipment of machinery was the legally established tariff rate in force at the time on traffic of that description, that it was the duty of the carrier to apply that rate, and deviation therefrom would have been unlawful. The complainant's case rested wholly upon an alleged

contract for a lower and unauthorized rate. Granting that a contract for a lower rate was made precisely as claimed by the complainant, it was not binding upon the defendant company, and its violation furnished no ground for redress under the act to regulate commerce. While upon the record in this proceeding the Salton rate must be presumed reasonable, the Commission said that nothing contained in its decision would preclude further consideration of that question should occasion therefor arise.

One member of the Commission dissented.

CLASSIFICATION OF HAY AND STRAW.

The case instituted by the National Hay Association against the principal carriers operating in Official Classification territory, in which an advance in the classification of hay and straw from sixth to fifth class rates made by such carriers on January 1, 1900, was challenged, was decided by the Commission on October 16, 1902, in favor of the complaining association (9 I. C. C. Rep., 264). The advance in the classification of these articles covered but 2 out of 818 items which were changed by these carriers from a lower to a higher class on the date mentioned. The Official Classification is used by practically all railroad carriers in the territory roughly described as lying east of the Mississippi and north of the Ohio and Potomac rivers. The defendants claimed in this case that the advanced rates on hay and straw were justified by greater cost of railway operation and construction, but it appeared that such increased rates were made effective at a time when, notwithstanding increased prices of railroad material and some additional cost of operation, an unprecedented volume of trade and railroad traffic had become established, when there were no indications that such commercial prosperity would not continue for an indefinite period, and after they had successfully inaugurated and adopted operating economies, through the use of larger and heavier equipment and improvement of roadbeds, which served to decrease the percentage cost of operation. The evidence abundantly proved that they were not then, nor at any subsequent period, in any such financial condition as to call for the large advances which were made by them, through concerted action, to apply throughout the whole length and breadth of Official Classification territory. Some of the companies were, and are, in much better condition than others, but the action under consideration was taken by all and intended to have beneficial effect upon all, through the increased profits accruing from general rate advances upon a great number of classified articles, including hay and straw.

Carriers are entitled under the act to regulate commerce to determine for themselves what are proper rates in the first instance, but the Commission held that when they, as in this case, make numerous

rate advances by concerted action and under circumstances not showing justification for increased revenue, they can not successfully plead the excuse of financial necessity where the legality of such action as applied to any given commodity is challenged; and the controlling question must be as to the reasonableness and justice of the particular advance in classification and rate upon the facts shown in each case.

The Commission said, however, that if it be assumed that some valid reasons existed for increased revenues to the defendants, it was nevertheless dealing with a question where the relation of rates as between hay and straw and other commodities was a chief matter for consideration, and this involved the recognized legal duty of the carriers to so classify traffic and fix charges thereon that the burdens of transportation should be reasonably and justly distributed among the articles they carry. That is the governing principle of a freight classification, and it arises under the obligation imposed upon carriers by the statute not to charge unreasonable or unjust rates or to impose any unjust discrimination or undue prejudice in any respect whatsoever. It is evident, therefore, that even in cases where the need of additional revenue is apparent, the carrier can not arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation.

If these carriers had advanced all of their class rates in case of complaint against the increased rate upon any particular article, the reasonableness of such higher charge might well have been the principal question; but what these defendants did on January 1, 1900, was to increase the classification rating, and consequently the rates, upon numerous commodities selected by them from the classification, including hay and straw, and by such action they laid themselves open to the additional charge of having subjected such higher rated traffic and those interested in it to undue prejudice and unjust discrimination.

The carriers kept hay and straw in the sixth class and charged sixth-class rates thereon for a period of thirteen years or more, with the exception of a few weeks in 1894. The Commission held that in doing this they were furnishing evidence that such classification and rates were reasonably high, and while the continuance of such classification and rates was not conclusive evidence of their reasonableness, it was in the nature of an admission against them which tended to show the unreasonableness of the advance of hay and straw to fifth-class rates in January, 1900, and the force of this admission became great in view of the largely increased business and profits of the defendants in 1899 and subsequent years.

The Commission restated a ruling laid down in a former proceeding that in the carriage of great staples which supply enormous business, and which in market value and actual cost of transportation are among

the cheapest articles of commerce, rates yielding only moderate profit to the carriers are both necessary and justifiable; and applying that ruling in this case it said that although the defendant carriers may be at some greater expense to handle and transport hay than some other articles in the fifth or sixth class of their freight classification, the character, value, volume, and use of that commodity are such as to require relatively low charges for its carriage.

In a freight classification like the Official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in character, use, value, volume, bulk, weight, risk, expense of handling and competition; the best that can be done under such a scheme of classification is to place two or more articles possessing general similarity in the same class, and where an article is not analogous to any other to put that article in the class containing commodities which are most nearly related to it in general character and other essential respects.

It was conceded that hay and straw should take the same rates. Hay, in respect of character, use, value, and volume, corresponds more nearly with articles taking sixth class or lower commodity rates than with those in the fifth class. Apparently all commodities which come to defendants in aggregate volume or tonnage equal to or exceeding that of hay were given commodity rates by the defendant carriers. Hay, as compared with grain and some other articles, when carried between the same points gave the carriers less revenue per car, but the Commission said that it did not follow therefrom, taking the whole traffic, local as well as through, that hay may not give the carriers an average revenue per car per mile nearly as great or even greater than that derived from grain or such other articles, and this was illustrated by a table showing actual tonnage, revenue, and average earnings per car upon all hay, potatoes, apples, and grain carried for a period of nine months by one of the most economically operated and best equipped roads in Official Classification territory. Though hay may be less desirable than grain as an article of traffic, the Commission found that it is much more profitable to the carriers, considering its greater volume and the certainty of large quantities seeking transportation each year, than many, if not all, other commodities actually taking fifth or even sixth class rates. Hay is a raw agricultural product which is grown, shipped, and consumed in all parts of Official Classification territory, and, coming to the carriers in steady and large volume, is profitable to them at sixth-class rates.

It also appeared that the cost to the shipper of transporting hay from the Middle West to Eastern markets constitutes a large part of its value in such markets, and when added to the cost of baling and sale the total approximates or exceeds the price realized by the producer. The increased rates added to the cost of hay and straw to consumers

or diminished the price to producers, or both, and prejudiced in some degree the business of middlemen. It further appeared that the advance in hay rates changed a long-existing rate adjustment as between American and Canadian hay shipped to New England and parts of New York in favor of a producing section in a foreign country from which hay shipments into the United States are required by law to pay a duty as high as $4 per ton. We were of the opinion, upon all the facts and circumstances, that the carriers were mistaken in believing hay and straw to have been improperly classified and carried by them as sixth-class freight, and that their action on January 1, 1900, whereby those commodities were raised to fifth-class and thereafter charged fifth-class rates was unreasonable and unjust, and resulted in unlawful discrimination and prejudice against hay and straw, localities in Official Classification territory wherein those commodities are produced, and against producers, shippers, dealers, and consumers of such articles in that section of the country.

An order was entered requiring the carriers to cease and desist from such violations of law on or before December 1, 1902, but the order has not been obeyed.

LONG AND SHORT HAUL CHARGES—RELATIVE RATES.

The case brought by the mayor and council of Tifton, Ga., against the Louisville and Nashville Railroad Company and other carriers, decided by the Commission in March, 1902 (9 I. C. C. Rep., 160), involved the question of the legality of freight rates to Tifton, Ga., as compared with those to surrounding longer distance points from New York, Cincinnati and other Ohio River points, and Nashville, and also the rates from New Orleans.

Freight passes from New York and other Eastern cities over water and rail lines via Savannah to Tifton, Ga., and through Tifton to Albany, Ga. Freight also passes by all-rail routes from Cincinnati, Louisville, Evansville, and Nashville to Tifton, and through Tifton to Valdosta, Ga. The circumstances and conditions at Tifton were shown to be substantially similar to those at Albany on traffic from the east, and the circumstances and conditions at Tifton were shown to be substantially similar to those at Valdosta on traffic from the north and west. Accordingly, the Commission held that freight rates from New York and other Eastern cities over such water and rail lines to Tifton, which are higher than those to Albany, the longer distance point, are in violation of the act to regulate commerce; and that freight rates from Cincinnati, Louisville, Evansville, and Nashville, which are higher to Tifton than those to Valdosta, the longer distance point, are also in violation of that statute. It was further held that nothing in the decision should authorize the increase of freight rates to Tifton, which are less than those to Albany or Valdosta, and that the rates then in

force for the transportation of sugar from New Orleans to Tifton were unjust and unduly prejudicial to Tifton, and that such rates to be lawful should not exceed the rates on the same commodity from New Orleans to Valdosta.

Tifton is not a point intermediate on the same line between New Orleans and Valdosta, but the distances to both places are similar, the initial and delivering carriers over the short lines to both points are the same, and on account of these facts and the further consideration that the same rates are in force to Valdosta and Tifton, and that it is the practice to make rates on sugar from New Orleans to all points in this territory with reference to the rates from the Ohio River, and that the rates from New Orleans to Tifton about three years ago were practically as low as those in effect at the time of the decision to Valdosta, it was held that the sugar rate from New Orleans to Tifton should be the same as from New Orleans to Valdosta.

One of the defendants in this case, the Tifton and Northeastern Railroad Company, which delivers a large proportion of the freight tonnage destined to Tifton, while disclaiming responsibility for the rates in question, admitted each and every allegation of the complaint. The other defendants relied upon the theory that lower rates for the longer haul may in the discretion of the carriers be established to meet competition when it exists without regard to the rates for the shorter haul where it does not exist. The idea seemed to be that this one fact—actual operating competition at one place and not at another, or greater at one place than another—is the controlling factor in such a case, regardless of the overpowering advantages which the discrimination in rates thus made may set up in favor of one competing community against another. Applying that theory to this case, several witnesses who were traffic officials of some of the defendant carriers testified in substance that the carriers to the points of destination in question other than Tifton had competed with each other nd thereby brought into effect the rates thereto, which were therefore competitive rates and lower than they might reasonably be in the absence of such competition; that the carriers had not competed at Tifton in the same way; that the rates to Tifton were lower for like distances than could be obtained by any other known mode of transportation to that place, and that therefore in their opinion the rates in question were reasonable and just.

The Commission held that neither the absence nor presence of competition by carriers alone, nor the extent of its operation measured solely by their financial interests, could be relied on to produce rates reasonable and just to all. There may be effectual means foreign to local traffic conditions for curbing competition at one point and not at another. One carrier may deem lower rates just and due to a given point and desire to put them in, and yet be restrained because of the

power of retaliation or the threat of rate changes by a rival carrier at some other point detrimental to the former carrier. The necessary result of the theory set up in defense of these rates would be to allow the carriers to create and shape the conditions to justify their rates. They could, among other things, restrain competition at one place by agreement or otherwise and not do so at another, and that, too, independent of equal facilities for competition in carrying at both.

The Commission restated the ruling of the United States Supreme Court in the Import Rate case (162 U. S., 197), namely, that it is the duty of the Commission to fully consider all the circumstances and conditions that reasonably apply to the situation, the legitimate interests of the carrying companies as well as those of traders and shippers, the welfare of communities at localities where the goods are delivered as well as that of communities in the places of shipment, and held that to give effect to this rule a much broader view must be taken than that of the competition of carriers alone.

The order issued by the Commission against the carriers in this case was disobeyed, and a petition to enforce the order is now pending in the United States circuit court for the southern district of Georgia.

UNREASONABLE AND UNJUST RATES—PUBLICATION OF TARIFFS.

In the case of Charles H. Johnson against the Chicago, St. Paul, Minneapolis, and Omaha Railway Company and other carriers (9 I. C. C. Rep., 221), the Commission decided that the freight rates in effect from Chicago, Ill., to Norfolk, Nebr., and from Duluth, Minn., to Norfolk, were unjust and unreasonable; and upon the facts and circumstances shown in the case it was held by the Commission that the rates from Chicago to Norfolk should not exceed those in force from Chicago to Columbus, Nebr., and that the rates from Duluth to Norfolk should not exceed the rate in force from Duluth to Emerson, Nebr., added to the local rate then in force from Emerson to Norfolk.

It also appeared in this case that the failure of the Chicago, St. Paul, Minneapolis and Omaha Railway Company to publish through freight rates from Chicago, Ill., and other points to Norfolk, Nebr., while such through rates were established and published by that company in connection with other carriers to other points on its line in Nebraska, amounted to unlawful discrimination against Norfolk.

Another question in the case involved the method of posting tariffs in railway stations, and it was held that posting a notice in a station or depot that the tariff sheets of the railroad company may be found in some other place is not compliance with the provision in the sixth section of the act requiring the posting of rate schedules or tariffs in every such depot or station.

A dissenting opinion was filed by one member of the Commission in this case. The decision was complied with by the defendant carriers.

DISCRIMINATION IN FURNISHING CARS.

Two cases were decided by the Commission on April 23 last, in which unlawful discrimination in furnishing cars was alleged by the complainant. They were brought by S. J. Hawkins, of Collins, Ohio—one against the Lake Shore and Michigan Southern Railway Company and another against the Wheeling and Lake Erie Railroad Company (9 I. C. C. Rep., 207, 212). In the first it was found that the carrier discriminated against the complainant in favor of other shippers in furnishing cars at Collins, Ohio, ordered during the months of January and February, 1901, and in not furnishing cars for his shipments from Kipton, Ohio, which were ordered in August and September, 1900, until the following December and January, while cars ordered by other shippers at Norwalk were provided with comparative promptness. This was held to be unlawful discrimination against the complainant and his traffic and against Kipton as a locality in favor of Norwalk; and it was also held that the complainant should have reparation for damages thereby sustained in the amount of $200.

In the other case it appeared that during the period between September 3, 1900, and March 6, 1901, the carrier distributed cars for the movement of traffic in such manner as to discriminate in marked degree against the complainant, who desired to ship freight from Hartland, Clarksfield, and Brighton, Ohio, noncompetitive stations, in favor of shippers at Norwalk, Ohio, and other competitive stations. This was also held to be unlawful discrimination against the complainant, his traffic, and such noncompetitive stations in favor of the competitive stations, shippers therefrom and traffic there originating, and reparation in the amount of $100 was awarded to the complainant. The decision in each case was obeyed.

CIVIL CASES PENDING IN THE COURTS.

Brewer et al. *v.* Louisville & Nashville Railroad Company et al. Griffin, Ga., long and short haul case. United States circuit court, southern district of Georgia.

Interstate Commerce Commission *v.* Northern Pacific Railroad Company et al. Fargo, N. Dak., long and short haul case. United States circuit court, district of North Dakota.

Interstate Commerce Commission *v.* Western New York & Pennsylvania Railroad Company et al. Discriminating rates on petroleum oil. United States circuit court, western district of Pennsylvania.

Interstate Commerce Commission *v.* Nashville, Chattanooga & St. Louis Railway Company et al. Hampton, long and short haul case. United States circuit court of appeals, fifth circuit.

Interstate Commerce Commission *v.* Southern Pacific Company et al. Kearney long and short haul case. United States circuit court, northern district of California.

Interstate Commerce Commission *v.* Louisville and Nashville Railroad Company et al. La Grange, Ga., long and short haul case. United States Supreme Court.

Interstate Commerce Commission *v.* Southern Railway Company. Danville long and short haul case. Circuit court of appeals, fourth circuit.

Interstate Commerce Commission *v.* Cincinnati, Portsmouth and Virginia Railroad Company et al. Wilmington, N. C., long and short haul case. United States circuit court for the eastern district of North Carolina.

Interstate Commerce Commission *v.* Southern Pacific Company et al. California orange case. United States circuit court, southern division of the southern district of California.

Interstate Commerce Commission *v.* Louisville and Nashville Railroad Company. Tifton, Ga., long and short haul case. United States circuit court, eastern division of the southern district of Georgia.

To these should be added the injunction proceedings mentioned in another part of this report.

CRIMINAL PROCEEDINGS.

On March 14, 1902, an indictment was returned in the district court of the United States for the western district of Kentucky charging the Louisville and Nashville Railroad Company with failure to file tariffs with the Commission as required by section 6 of the act. This case is set for trial at the March term, 1903.

In the western district of Tennessee indictments were found on May 28, 1902, against the Illinois Central Railroad Company, the Southern Railway Company, the St. Louis and San Francisco Railroad Company, the Louisville and Nashville Railroad Company, the St. Louis, Iron Mountain and Southern Railway Company, the Nashville, Chattanooga and St. Louis Railway Company, and also against J. T. Harahan, second vice-president, T. J. Hudson, traffic manager, and F. B. Bowes, general freight agent of the Illinois Central Railroad Company; W. W. Finley, second vice-president Southern Railway Company; B. L. Winchell, vice-president and general manager of the St. Louis and San Francisco Railroad Company; C. B. Compton, traffic manager, and D. M. Goodwyn, general freight agent of the Louisville and Nashville Railroad Company; and Horace F. Smith, traffic manager of the Nashville, Chattanooga and St. Louis Railway Company, for pooling cotton shipped from Memphis to various interstate destinations.

Indictments are also pending in the northern district of Georgia against the Western and Atlantic Railroad Company, the Atlanta and West Point Railroad Company, the Southern Railway Company, the Georgia Railroad and Banking Company, the Seaboard Air Line Railway Company, and W. H. Pleasants, traffic manager, and C. R. Capps, general freight agent, of the Seaboard Air Line Railway Company; Horace F. Smith, traffic manager, and J. A. Sams, division freight agent, of the Western and Atlantic Railroad Company; C. A. Wickersham, general manager, and R. E. Lutz, traffic manager, of the Atlanta and West Point Railroad Company; W. W. Finley, second vice-president, and E. A. Niel, general freight agent, of the Southern Railway Company; T. K. Scott, general manager, and A. G. Jackson, general freight agent, of the Georgia Railroad and Banking Company; and Samuel F. Parrott, for pooling cotton shipped from Atlanta to various destinations.

On September 4, 1902, the grand jury for the district of Minnesota returned an indictment against Henry F. Whitcomb, president, and Burton Johnson, general freight agent, of the Wisconsin Central Railway Company; William R. Burt, president, and W. H. Bennett, general freight agent, of the Ann Arbor Railroad Company, for carrying traffic at rates less than those specified in tariffs filed with the Commission under the provisions of section 6 of the act.

COURT DECISIONS.

Four court decisions have been rendered during the year in cases involving enforcement of orders of the Commission. One of these cases, known as the Chicago Live Stock Terminal Rate case, was decided by the United States Supreme Court, and the other three, the Danville (Va.) and Hampton (Fla.) Long and Short Haul cases, and the Savannah (Ga.) Naval Stores and Cotton case, by United States Circuit Courts.

THE CHICAGO LIVE STOCK TERMINAL RATE CASE.

The Commission held in the case of Cattle Raisers' Association of Texas et al. *v.* Chicago, Burlington and Quincy Railroad Company et al. (7 I. C. C. Rep., 513) that a terminal charge of $2 per car for delivering live stock to the Union Stock Yards in that city was unlawful under sections 1 and 3 of the act to regulate commerce, and recommended that the carriers delivering live stock in Chicago should not exceed a charge of $1 per car for such service. A petition by the Commission to enforce the order was dismissed by the United States circuit court for the northern district of Illinois, and the circuit court of appeals subsequently affirmed the judgment of the circuit court. The decisions of the circuit court and circuit court of appeals in this case were discussed in our Thirteenth and Fourteenth Annual Reports. An appeal

was taken to the United States Supreme Court, and the decision of that court was rendered on June 2 of the present year (186 U. S., 320).

As to the action of the carriers in providing a separate terminal charge for delivery to the stock yards, the court said:

> As the right of the defendant carriers to divide their rates, and thus to make a distinct charge from the point of shipment to Chicago and a separate terminal charge for delivery to the stock yards, a point beyond the lines of the respective carriers, was conceded by the Commission, and was upheld by the circuit court of appeals, no contention on this subject arises. If, despite this concurrence of opinion, controversy was presented on the subject, we see no reason to doubt, under the facts of this case, the correctness of the rule as to the right to divide the rate admitted by the Commission and announced by the court below. This is especially the case, in view of the sixth section of the act to regulate commerce, wherein it is provided that the schedules of rates to be filed by carriers shall "state separately the terminal charges and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges." Whether the rule which we approve as applied to the facts in this case would be applicable to terminal services by a carrier on his own line, which he was obliged to perform as a necessary incident of his contract to carry, and the performance of which was demanded of him by the shipper, is a question which does not arise on this record, and as to which we are therefore called upon to express no opinion.

The court then proceeded to consider whether there was a separation of the charge for carriage and the charge for the terminal services, and whether the rate—separated or aggregated, as might be found to be the case—was just and reasonable. To determine these questions it was essential, the court said, to fix the situation prior to June, 1894, at which time the terminal charge was first imposed. It was found that prior to that date there was no such separation, and that the carriers, under their contracts to carry to Chicago, delivered car loads of cattle to the stock yards without making any charge other than that which was specified in the through rate. The court held that the through rate existing prior to June 1, 1894, must be presumed to have provided in and of itself compensation for the services rendered in making delivery at the stock yards. That being the case, the court holds that there was no segregation of the terminal charge from the through rate, thus making one distinct terminal charge and another distinct through rate, and said:

> This is the convincing result, since the schedules did not purport to draw out from the previous through rate the sum of compensation contained therein for terminal services. On the contrary, the entire previous through rate was retained, and a memorandum was placed upon the schedules to the effect that thereafter an additional charge of $2 for delivery at the stock yards would be exacted. This was a mere addition to the sum of the terminal charge embraced in the prior through rate. We think that it can not be said that to add an additional amount to a former charge was necessarily to divide such former charge without holding that to add one sum to another is necessarily to divide the other.

The court also holds that it is the purpose of the sixth section of the act to regulate commerce, in compelling the schedules to be so drawn

as to plainly inform of their import is to exact that when the rates are changed the change shall be so stated as not to mislead and confuse, all of which would be frustrated if the schedules relied upon were given the effect which the defendants claim for them.

The court then proceeded to determine whether the additional charge of $2 was just and reasonable, and said that it needs no reasoning to demonstrate that the Commission correctly held that the mere imposition by the Stock Yards Company of a new burden upon the railroads, averaging $1 per car, did not justify an additional charge by the railroad companies of $2 per car, and that it was likewise equally plain that if the prior rate was just and reasonable, as the Commission found it to be, that the addition, without reason, of $2 per car, caused the rate to become unjust and unreasonable to the extent of the extra dollar. The court further said it follows that the order of the Commission was right if its correctness depends upon considerations previously stated, but that such was not the case.

Here the court quoted a finding in the first report of the Commission in this case to the effect that about October 1, 1896, the through rate from points embraced in the territory covered by the complaint to all Western markets, including Chicago, had been reduced 5 cents per 100 pounds, and that this would amount to from $10 to $15 per car. In other words, said the court, it was held that the rate, which was unjust and unreasonable solely because of the $1 excess, continued to be unjust and unreasonable after this rate had been reduced by from $10 to $15. The court then considered a statement made by the Commission in its opinion delivered on the reargument of the case, which new finding or statement by the Commission refers to the reduction in the through rate on October 1, 1896, but says that such reduction did not, however, apply to all the territory to which the terminal charge applies, but only to certain limited portions of that territory, and that the purpose of it was to equalize the rate from those sections as compared with other sections.

Upon this point the court said:

> It is apparent that there is an irreconcilable conflict between the statement thus made and the facts as recited by the Commission in its first report, for therein it was declared that the reduction applied "to live stock from points embraced in the territory covered by this complaint to all Western markets, including Chicago." The report deduced from this premise of fact the conclusion that if the through rate could be considered "all ground of complaint has been removed" by the reduction. We find it in reason difficult to treat the statements made after the reargument as substantive findings of fact, overthrowing the facts stated in the first report.

The reason given for this conclusion was that in the report of the Commission after reargument it was "declared that the previous findings are modified to the extent necessary to make it clearly appear that the terminal rate of $2 independently considered had been found unquestionably to be reasonable, and that there is no expression in the

report on reargument tending to show that it was the purpose to modify in other particulars the findings as previously made."

The decision of the court in this case concludes as follows:

The finding in the first report is that the reduction applied to the whole territory and removed all ground of complaint if the through rate could be considered, while the statement in the report after the reargument is that the reduction in the through rate did not apply to the whole territory, but was only partial. Aside from this difficulty another confronts us. The first finding of the Commission was that both the through rate and the terminal rate, separately considered as distinct charges, were in and of themselves just and reasonable at the time the complaint was filed, and this is expressly reiterated in the report delivered after the reargument. Now, the passage which we have just previously excerpted from the report after the reargument, states that the reduction of the through rate was partial and applied only to portions of the territory, and that it was made in order to "equalize the rates from those sections as compared with other sections." But it is impossible in reason to accept this conclusion, even if it be treated as a finding of fact, if the finding made originally and reiterated after the reargument is to be applied; that is, that the rates, when separately considered, were just and reasonable. This is necessarily the case, since in consonance with reason it can not at the same time be declared that the rates separately considered were just and reasonable at the time the complaint was filed, and yet it be found that some of the just and reasonable rates were unequal and hence unjust, and required to be changed in order to remove the inequality, and therefore the unreasonableness which existed in them. If, however, the conflicts to which we have referred be put out of view and the statement in the report after the reargument, to which we have adverted, be treated as a substantive finding and as overthrowing by implication the findings expressly made in the first report and some of those expressly reiterated in the second report, we find ourselves nevertheless unable to reverse the court below and direct the execution of the order entered by the Commission. That order was general and operated upon all the carriers in the whole territory covered by the complaint. But if the statement on the rehearing, which we are considering, be taken as a finding and given, *arguendo*, the force previously stated, then it follows that the rate from the points in the territory to which the reduction applied were just and reasonable, and as to those points the order should not have been rendered, and there is no finding establishing the points to which the reduction applied which would enable us to separate the reasonable from the unreasonable rates. It results that the findings do not afford the basis of even sustaining the order in part. Whether or not, in making the reduction, the terminal charge entered into the minds of the carriers is a matter of no concern. The question is, Was the rate as reduced just and reasonable?

Being then constrained to the conclusion that the order of the Commission was not sustained by the facts upon which it was predicated, we can not enter into an independent investigation of the facts, even if it be conceded the record is in a condition to enable us to do so, in order that new and substantive findings of fact may be evolved, upon which the order of the Commission may be sustained.

The court thereupon affirmed the judgment of the court below, but directed that nothing in the decree refusing to execute the order of the Commission should be construed as preventing that body, if it deemed best to do so, from thereafter commencing proceedings to correct any unreasonableness in the rate resulting from the additional terminal charge as to any territory to which the reduction referred to in the opinion, if any such there be, did not apply.

In the opinion of the Commission upon the reargument there was no claim that the reduction in the rate referred to was made on account of the imposition of the terminal charge or that it would not have been made if no terminal charge had been imposed, nor that if the Chicago rate of June 1, 1894, ought to have carried with it a delivery at the stock yards the present rate should not likewise do so. The view taken by the Commission was in accord with the general view above set forth as having been taken by the court, namely, that if the rate prior to June 1, 1894, was just and reasonable, the addition, without reason, of $2 per car caused the rate to become unjust and unreasonable to the extent of $1 per car, it having been found that the carriers were subjected after June 1, 1894, to a further average cost in delivering cattle to the stock yards in Chicago of $1 per car.

It is unfortunate that the exact purpose and effect of the reduction in the through rate were not shown upon the record as presented to the court, and that the statements in the two opinions of the Commission which the court found to be irreconcilable could not have been explained upon the record previous to the entry of the final decree. It is expected that the case will be reopened before the Commission, and that further testimony, especially such as will indicate the extent and character of the reduction in the through rate on October 1, 1896, will be taken.

THE SAVANNAH, GA., NAVAL STORES AND COTTON CASE.

This was a case brought by the Commission in the United States circuit court for the eastern division of the southern district of Georgia against the Louisville and Nashville Railroad Company, the Florida Central and Peninsular Railroad Company, and the Savannah, Florida and Western Railroad Company to enforce its order issued against those companies in a case instituted before the Commission by the Savannah Bureau of Freight and Transportation and nine other complainants, who were described as "general merchants, naval stores manufacturers, and cotton shippers" in Florida along the line of the Pensacola and Atlantic Division of the Louisville and Nashville Railroad Company. The decision of the circuit court, rendered in July last and reported in 118 Fed. Rep. 613, sustained the order of the Commission.

The Louisville and Nashville Railroad Company, in order to prevent the movement eastward to Savannah of cotton from its Pensacola and Atlantic Division stations, and cause that traffic to move in the opposite direction to New Orleans and over its lines to the Northwest, advanced the Savannah cotton rate from $2.75 to $3.30 per bale, and also, with the same end in view, made the rates from such Pensacola and Atlantic Division stations on naval stores—turpentine and rosin—to Savannah, relatively as well as absolutely, very much higher than its rates to Pensacola and over its lines to the Northwest. The court found

that the rates thus established were not only excessive, but prohibitory, and subjected Savannah to an undue prejudice in favor of Pensacola, New Orleans, and other points on the lines of the Louisville and Nashville road to the Northwest. It said that these discriminations against Savannah were practically admitted by the defendants, and that the sole justification relied upon was the promotion of the interest of the Louisville and Nashville Railroad by building up the port of Pensacola, and further by securing to that road the long hauls from Pensacola to the Northwest. The court held that while a railroad may so adjust its rates as to promote its legitimate interests, it can not for this purpose adopt rates excessive in themselves, in violation of section 1 of the law, or unduly preferential to points on its own line and unduly prejudicial to points on another line, in violation of section 3 of the law.

The rates complained of on naval stores from Pensacola and Atlantic Division stations to Savannah were held by the court to be not only unduly prejudicial to Savannah, but also unduly prejudicial to such stations on the Pensacola and Atlantic Division in that they limited them to the so-called Pensacola market and debarred them from the better market at Savannah.

The court further held in this connection that a railroad corporation may not fix its rates with a view solely to its own interests and ignore the rights of the public; the public can not properly be subjected to unreasonable rates in order simply that the stockholders may receive dividends.

It appeared that the Pensacola and Atlantic Division of the Louisville and Nashville road, extending from Pensacola to River Junction, Fla., on the Chattahoochee River, taken as a separate road and not as a part of the Louisville and Nashville system, failed to pay its expenses; but it was held by the court that this did not justify the discriminations shown in this case; that there are many such roads absorbed by the principal railway systems of the country and, if this contention were sustained, it would in a great majority of cases, involving unfair and prejudicial rates, effectually nullify the interstate-commerce law and the powers of the Interstate Commerce Commission.

It appeared that the advance of the cotton rate to Savannah from $2.75 to $3.30 per bale was not made until after the hearing before the Commission, but was made while the case was pending before the Commission, was called to the attention of the Commission by the defendants, and was embraced in the order of the Commission. One of the matters in issue, therefore, before the Commission was the Savannah cotton rate. The defendants in their answer in the court denied that the rate of $3.30 was in violation of either section 1 or 3 of the law, and on this issue evidence was taken and argument had.

The defendants contended that, as the increased rate was made after the hearing before the Commission, the Commission had no jurisdiction to declare the rate of $3.30 unreasonable and excessive; but the court held that as the cotton rate to Savannah was in issue before the Commission the legal effect of the Commission's findings would not be defeated upon a technical objection of this character, and, moreover, that whatever the defendants might have said before the Commission, they were estopped from objecting to the jurisdiction of the court, because they denied in their answer that such rates were in violation of the act, as found by the Commission, and that upon this issue evidence had been taken in the court and the defendants had clearly submitted to the jurisdiction of the court in respect to the advanced cotton rate.

The rates to Savannah were regularly published rates, participated in by each of the defendants, and their proportionate divisions were brought about by an agreement between themselves. This, it was said, constituted "a common control, management, or arrangement for a continuous carriage or shipment," as defined by section 1 of the act to regulate commerce, and therefore each of the participating roads was within the scope of the act, and, to the extent of its authority, under the control of the Commission.

Speaking of the Commission, the court said the Interstate Commerce Commission must be regarded as an expert tribunal with relation to transportation rates, and that whether the members of the Commission are in fact expert or otherwise is not open to question, for they are, by section 12 of the act, required to execute and enforce its provisions regulating commerce.

Construing sections 14 and 16 of the statute, the court further held that the act to regulate commerce expressly makes the findings of fact in the report of the Commission prima facie evidence of the matters therein stated; that the conclusions of the Commission upon those facts and its order based thereon are also to be held prima facie correct and lawful; and that the burden is upon the defendants to show the erroneous character of the Commission's findings and the unlawfulness of its order.

In concluding its opinion, the court said:

We do not underestimate the gravity and importance of the interests involved in this controversy. The record has been given that anxious and deliberate consideration seemingly appropriate, and which besides was made necessary by its great volume and complexity. The railways of our country have been aptly said to constitute the arteries of the national life. The public official or other person who would grudge to them the large measure of prosperity which their inestimable services to the country deserve is as short-sighted as unpatriotic, as narrow as unjust. While this is true, the mistakes or excesses of zeal or judgment on the part of railway officials may at times make these vast enterprises, ordinarily benevolent, instrumentalities of grave private wrong and communal injury. The framers of the Constitution, though

unconscious of the indescribable development in the intercommunication of the people, yet "prophetic and prescient of all the future had in store," provided for every contingency when it bestowed upon Congress the tersely expressed but elastic power "to regulate commerce with foreign nations and among the several States."

Congress has exercised this power, and the righteous orders of the great Commission it has primarily intrusted with the tremendous duty should in all proper cases be respected and enforced by the courts of the country. The organic law upon which this power in Congress and in the courts is founded, is the sure guaranty to investors in transportation lines against the assaults, whether of the agrarian or the demagogue, the anarchist or the mob. While on occasion the railway company or other corporation may suffer a temporary diminution of revenues from an order of this character, the interest of the public, and in the end the interest of the corporation itself, is conserved. In all such cases the general welfare must control.

THE DANVILLE, VA., LONG AND SHORT HAUL CASE.

On August 4, 1902, the United States circuit court for the western district of Virginia rendered its decision in a case brought by this Commission against the Southern Railway Company to enforce an order issued against that carrier in a proceeding before the Commission instituted by the city of Danville. The decision of the court is reported in 117 Federal Reporter, 741.

The Commission held in this case that freight rates from Northern and Eastern cities, from Western points of shipment, and from New Orleans to Lynchburg, Va., the longer distance point, might properly be somewhat lower than the rates to Danville, the shorter distance point, but that rates to Danville as compared with those then in force to Lynchburg were excessive under the long and short haul clause as well as the undue preference section of the act to regulate commerce; that the rates from Northern and Eastern cities to Danville and the rates from New Orleans to Danville on sugar, molasses, rice, and coffee should not exceed those to Lynchburg by more than 10 per cent, and that the rates between Danville and the West, including the rate on tobacco to Louisville, Ky., should not exceed those between Lynchburg and the West by more than 15 per cent.

The circuit court refused to enforce the order of the Commission, holding in substance that the lower rates to Lynchburg, the longer distance point, were compelled by the competition of other railway carriers, and that the prima facie case made by the findings of the Commission that the rates charged by the Southern Railway Company to and from Danville were unjust and unreasonable, was overcome by the evidence, which included new evidence taken since the hearing before the Commission. An appeal was taken to the circuit court of appeals, and the case was argued in that court in November.

Apparently the circuit court in disposing of this case took no account of the situation of Danville and Lynchburg, the trade competition between the two cities, or the general method of making rates adopted by carriers in Southern territory. In considering the question of the

reasonableness of rates to Danville the court compared those rates with rates to other cities in the South and found that the Danville rates compared favorably with those to other Southern cities; but this, as shown in the opinion of the Commission, results from the system of rate making employed in the South, and other considerations—such, for instance, as distance from the point of shipment—might operate to destroy the value of such comparison. The Commission held that this system of rate making into Southern territory, under which, on traffic from St. Louis, Chicago, and other points, the rates to Danville are the sums of locals to and from the Ohio River, and the rates to Lynchburg are made on a much lower joint-rate basis, is utterly unreasonable. We expressed no opinion as to the system as a general scheme, but said if the carriers desired to make rates in that manner they must so adjust their charges as not to annihilate the city of Danville; that rates to Danville must be adjusted with relation to rates to competitive localities like Lynchburg, and that the carriers from the point of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business.

We further said that in determining the Danville rate from New Orleans and Western points of shipment, the Southern Railway, which dominates the situation, should, instead of adding to the rate to Lynchburg the local back from Lynchburg, recognize that the business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a through rate.

THE HAMPTON, FLA., LONG AND SHORT HAUL CASE.

In this case the Commission ordered the defendant carriers to cease and desist from charging rates from St. Louis, Nashville, and Chattanooga which were much higher for the shorter distance to Hampton, Fla., than for the longer distance to Palatka, Fla., but that the rates to Hampton might lawfully be certain stated differentials higher than those to Palatka. The defendant carriers having disobeyed the order, suit to enforce it was brought by the Commission in the United States circuit court for the southern district of Florida. After trial the court dismissed the petition without a written opinion and appeal was taken to the circuit court of appeals.

A number of cases in Federal and State courts construing the act to regulate commerce and involving questions bearing on the carriage of interstate commerce have been decided, and are briefly noticed below.

DISCRIMINATION IN COAL RATES.

A decision in the case of the Lehigh Valley Railroad Company *v.* Rainey et. al. (112 Fed. Rep., 487) was rendered on January 4, 1902, in the United States circuit court for the eastern district of Pennsyl-

vania. The case was brought originally in the State court by Rainey and others to recover damages for unjust discrimination in rates on coal, the discriminating rates apparently have been granted to the Lehigh Valley Coal Company, a corporation owned by the railroad company. The case was removed to the Federal court on defendant's petition, and the court directed a verdict in favor of the plaintiffs. Thereafter, on motion for a new trial, the court rendered the decision above mentioned, which is short and reads as follows:

For present purposes it must be assumed that the rate complained of was discriminating, but I still think that a mere paper rate, which is never carried into effect, and is therefore simply a proposition to carry for a specified sum, is not such a violation of the interstate-commerce act as to prevent the carrier from recovering freight from other than the theoretically favored shippers. It is discrimination in fact, and not a mere intention to discriminate, that is punishable; and in the case before the court there was no evidence that a pound of coal had been carried to be sold in the market by any other shipper than the defendants. Hence no rival of the defendants was benefited by the unaccepted rate, and no harm was done to their business.

It did appear, however, that coal was carried by the plaintiff from the disputed point of shipment for use in its own engines; this coal having been mined by the Lehigh Valley Coal Company, which was clearly proved to be the Lehigh Valley Railroad Company in another dress. The identity of interest between the two corporations was so plain that it seemed idle to question it, so far as its practical effect upon the matter at issue was concerned, although, of course, the court did not intend to treat as nonexistent for all purposes the legal distinction between the two separate corporate entities. But dealing with real things and not with mere shows, it was clear to my mind that (for the purposes of the case before me) the coal company was mining as the scarcely veiled hand of the railroad company, and therefore that it made no difference at all what rate of freight was formally charged by the railroad company for hauling the coal. In essence, the railroad company mined, carried, and burned its own coal; and, under such circumstances, I still think it was correct to say that a charge for freight would be little more than a bookkeeping entry.

A new trial was refused.

DELIVERY OF LIVE STOCK TO COMPETING STOCK YARDS.

In Central Stock Yards Company *v.* Louisville and Nashville Railroad Company, the United States circuit court for the western district of Kentucky construed the provisions of the act to regulate commerce, with reference to an application for injunction to compel the defendant carrier to deliver stock to a connecting carrier, for the purpose of final delivery at a stock yard other than the yard used by the defendant carrier for such delivery in the same city (112 Fed. Rep., 823). The court said that section 3 of the act to regulate commerce requires every common carrier subject to its provisions to afford all proper and equal facilities for the interchange of traffic between their respective connecting lines; that section 8 of the act makes every such carrier liable to persons injured by the violation of any provision of the act for the damages sustained thereby; that section 9 provides that any person claiming to be so damaged may either make complaint to the

Commission or may bring suit for the recovery of such damages in the district or circuit court of the United States; and that section 16 authorizes a resort to equity to enforce the Commission's ruling. And thereupon the court held that the remedies provided by sections 8 and 9 of the act were exclusive, and that an appeal for injunction to compel obedience to section 3 would not lie. It further held that, the defendant having made answer to the bill, and as the complainant's right to preliminary injunction was not practically free from doubt, the preliminary injunction should not be granted.

This case having been appealed to the circuit court of appeals for the sixth judicial circuit, that court rendered its decision in July last (118 Fed. Rep., 113), the points of which are briefly stated as follows: Where a railroad company has, by building stock yards, or by contract with a stock yards company, made adequate provision for the discharge of its duty as a common carrier with respect to live stock shipped over its line to a city, it is not required by the common law to make delivery of stock consigned to such city to connecting roads for delivery at other stock yards therein. It is the duty of a carrier of live stock to provide reasonable facilities for the unloading and care of such stock; and where it has done so, either by building stock yards of its own or by contract with a stock yards company, its refusal to deliver stock to other stock yards in the same city is not an unlawful discrimination, in violation of section 3 of the interstate-commerce act. In the absence of statutory provision, the interchange of traffic between two connecting railroads is a matter for contract between them, and the courts have no power to compel such interchange, or to fix the terms on which it shall be made. Nor is such power conferred upon the courts by the interstate-commerce act. A State is without power to compel a railroad company to transfer cars of live stock to a connecting road at a point of connection within the State, where the shipment was received in another State, and is, therefore, a subject of interstate commerce.

CONTRACT RATE LOWER THAN RATES SPECIFIED IN THE PUBLISHED TARIFF.

In Gulf, Colorado and Santa Fe Railway Company *v.* Leatherwood (69 S. W. Rep., 119), the Texas court of civil appeals held that in an action to recover excess freight charges, evidence that a certain rate higher than that contracted for by the carrier, which higher rate was demanded by the agent at final destination, was in a printed tariff furnished the agent, and which tariff was on file in the office of the general freight agent, was not sufficient to show that it was established and published, as required by the interstate-commerce act.

LIMITATIONS UPON ACTIONS BROUGHT UNDER THE INTERSTATE-COMMERCE ACT.

In Ratican *v.* Terminal Railway Association of St. Louis, the United States circuit court for the eastern district of Missouri decided on March 11, 1902 (114 Fed. Rep., 666), that the interstate-commerce act prescribed no limitation of time within which actions based upon it shall be instituted, and therefore such actions (meaning actions for the recovery of damages) must be governed, as to limitation, by the statutes of the State wherein they are brought. It was also held in this case that the interstate-commerce act is a penal statute, and an action to recover damages for a violation of section 2, prohibiting discrimination in rates, is one to recover money in the nature of a penalty, and when brought in Missouri is governed, as to limitation, by section 2425 of the Revised Statutes of that State, which requires that action "upon any statute for any penalty or forfeiture to be given in whole or in part to the party aggrieved" be brought wholly within three years.

ACCIDENT TO A PASSENGER RIDING ON A PASS.

In the United States circuit court for the district of Maine the court in Duncan *v.* Maine Central Railroad Company (113 Fed. Rep., 508), held that a person riding over a railway on a pass given without consideration, and after assenting to the conditions that he should assume all risk of accident, and that the carrier should not be liable, can not recover from the railway for injuries caused by the negligence of its servants. It was also decided in this case that it was immaterial that the giving of the pass was a breach of the act to regulate commerce.

THROUGH ROUTES AND THROUGH RATES.

The decision of the United States Supreme Court in Minneapolis and St. Louis Railroad Company against Minnesota (186 U. S. 257), held that the act of the legislature of Minnesota creating a railroad commission is not unconstitutional in assuming to establish joint through rates or tariffs over the lines of independent connecting railroads and apportioning and dividing the joint earnings. Such a commission, says the court, has a clear right to pass upon the reasonableness of contracts in which the public is interested, whether such contracts be made directly with the patrons of the road, or for a joint action between the roads in the transportation of persons and property, in which the public is indirectly concerned. In this case the railroad commission undertook to revise an already existing joint rate, and the court held that without deciding whether connecting roads may be compelled to enter into contracts as between themselves and establish joint rates, it is none the less true that where a joint tariff between two or more roads has been agreed upon, such tariff is as much within

the control of the legislature as if it related to transportation over a single line. It is further held that the rates fixed by the commission must be presumed to be reasonable, and that the burden of proof is upon the railroad company to show the contrary. There was showing on the part of the defendant carrier that if the tariff fixed by the commission were applied to all freight, the road would not pay its operating expenses. But the court ruled that this did not prove the tariff fixed by the commission to be unreasonable, since it might well be that the existing rates upon merchandise, which are not disturbed by the commission, might be sufficient to earn a large profit to the company, though it might earn little or nothing upon coal in carload lots.

A further statement in the decision is that in exercising its power of supervising coal rates the commission is not bound to reduce the rates upon all classes of freight, which may perhaps be reasonable except as applied to a particular article; and if, upon examining the tariffs of a certain road, the commission is of opinion that the rate upon the particular article or class of freight is disproportionately or unreasonably high, it may reduce such rate, notwithstanding that it may be impossible for the company to determine with mathematical accuracy the cost of the transportation of that particular article as distinguished from all others.

IS TRANSPORTATION PASSING THROUGH DIFFERENT STATES, BUT BEGINNING AND ENDING IN THE SAME STATE, SUBJECT TO REGULATION BY STATE OR NATIONAL AUTHORITY?

We discussed in our last annual report a decision by the United States circuit court for the western district of Arkansas, which was to the effect that transportation passing through different States, but beginning and ending in the same State, constitutes commerce among the States, and is subject only to regulation by Congress. It is understood that this case is now pending on appeal in the United States Supreme Court. During the present year a contrary decision has been rendered by the United States district court for the western district of New York, in United States ex rel. Kellogg et al. *v.* Lehigh Valley Railroad Company (115 Fed. Rep., 373). In this case it was held that a shipment of grain over a single railroad between two points, both within the same State, but passing en route through different States, is not an interstate shipment so as to bring it within the terms of the interstate commerce act and authorize a Federal court to compel such shipment at the same rates charged other shippers of a like commodity. It is expected that this much-disputed question, which has given rise to numerous conflicting decisions, will now, on the appeal of the Arkansas case, be finally determined by the court of last resort.

DISCRIMINATION IN FURNISHING CARS.

The Utah supreme court held, in Nichols against the Oregon Short Line Company (66 Pac. Rep. 768), that where a shipper ordered cars of the railway company to be delivered at a certain date, the company's action in filling subsequent orders before the plaintiff's was unlawful discrimination.

THE SAFETY-APPLIANCE LAW.

The gratifying results of the law of 1893, requiring the use of automatic car couplers and of power brakes, were spoken of in the Fifteenth Annual Report. The benefits of the law have been increasingly evident during the past year. In particular, the number of persons killed and injured in coupling and uncoupling cars during the year ending June 30, 1902—the first entire year reported since the law went into full effect—shows a diminution as compared with 1893, the year in which the law was passed, of 68 per cent in the number killed and 81 per cent in the number injured.

In 1893 the number of casualties from this cause was 11,710 (433 killed, 11,277 injured); in 1902 it was 2,256 (143 killed, 2,113 injured); showing a reduction of 9,454. And it is to be borne in mind that the number of men engaged in this work is much larger now than it was in 1893.[a] Nearly complete figures for 1902 indicate the total number of employees in that fiscal year to have been approximately 1,195,371, and this represents an increase of 321,769 or 36.83 per cent, as compared with the number employed in 1893.

But casualties continue to occur, and their number is such as to call for continued and earnest efforts to eliminate their causes. We have the automatic coupler, but there are dangers against which it does not fully provide. Cars are frequently moved while not in complete running order. This is practically unavoidable, and it is the source of some of the casualties that appear in current reports. Much the larger part of the casualties are due, however, to causes which are avoidable. There is much complaint among trainmen that some couplers, being of bad material or workmanship, do not work properly; cars coming together do not couple except by a somewhat violent impact. This leads to breakage and to delays and annoyances. The men go between the cars to prepare for a second trial (when the first is unsuccessful) and sometimes are crushed or otherwise injured. This is a particularly insidious danger, since when one car is approaching another the danger to the man walking ahead of the moving car increases more rapidly as the space is diminished, and the danger from obscure difficulties, which the man while walking along, perhaps backward, does not clearly perceive, is greater than that from a pronounced defect which is understood at sight. The uncoupling levers or rods and their connections are a source of many injuries—probably from 20 to 30 per cent of all

[a] See Appendix for Table B, showing casualties to passengers and employees.

coupling accidents now reported. The fault with these parts is attributable to both bad design and imperfect maintenance. A perfect uncoupling device is as clearly required by the statute as is the automatic coupler; but the uncoupling requirement is not nearly so well complied with.

The report of the chief inspector, which appears as an Appendix to this report, gives a mass of interesting data concerning the condition of couplers on the freight cars of the country. He shows that during the fiscal year ending June 30, 1902, the 10 inspectors employed by the Commission examined 161,371 cars, as compared with 98,624 examined by the smaller number of inspectors during the year before. The number of cars on which one or more defects were found was 42,718, as compared with 19,462; the percentage found defective was 26.47, as compared with 19.73. This condition is due, not to worse conditions, but to the more systematic inspection of air brakes, the inspections of the earlier year having been devoted more particularly to couplers. The principal features in which the condition of couplers shows improvement are the increased use of solid knuckles and a diminution in the number of uncoupling rods incorrectly applied. On the other hand, some of the unsatisfactory conditions are as bad as ever. The poor maintenance of locking pins, a vital part of every coupler, calls for criticism, the number of defects reported under this head being 559, as compared with 128 the previous year. Almost one-fourth of the 559 cases were "wrong pin or block," a broken pin having been replaced by one not designed for that particular pattern of coupler.

The inspector's comments on this point deserve special attention. "Worn knuckles" is a serious defect which shows an increase, and the increase becomes the more significant when it is recalled that this is a dangerous condition which must in a large percentage of cases necessarily escape the scrutiny of the Commission's inspectors. Their inspection usually deals only with cars at rest, and in large yards such cars are in long trains, coupled together. Only in those couplers at the ends of the train—2 out of, perhaps, 50 to 200—are the contour lines sufficiently visible to be fairly examined. To detect more surely worn couplers the inspector recommends the use, both by railroad inspectors and those of the Commission, of a simple gauge, without movable parts, by which a coupler worn beyond the limit of safe service can be instantly detected. Uncoupling mechanism continues to be the most unsatisfactory feature of the coupler situation. In new cars there is, as just mentioned, an improvement in the application of this part; but of chains too short or too long, bent levers and other faults, there is a large increase. A chain too short will uncouple a car in motion, and this is a probable cause of disastrous wrecks. In coupler defects as a whole there is great need of better records, and the inspector's report calls attention to two roads on which valuable records are kept of those

couplers which fail in moving trains. It is regrettable to have to add that these two are the only companies, so far as known, which have undertaken this useful work.

The situation as regards the use of power brakes on freight trains has improved during the past year; but, as in the case of the automatic coupler, there is yet great need of further improvement. The percentage of air-braked cars used in trains is greater than a year ago, but it still is in a large part of the trains too small, and the use of hand brakes as the main or only means of regulating speed on steep descending grades continues on some important railroads. The letter of the statute is complied with when the engineman controls the brakes on enough cars in a train to control it and to stop it within a reasonable distance. This may be from 25 to 75 per cent of the cars, according to the condition of the brakes, the weight of the cars, braked and unbraked, and their lading, and the gradients of the line. But the statute contemplates—in spirit at least—the general use of power brakes on all the cars of every train. This full use is the prevailing practice on the railroads in the West, where air brakes have been longest used on freight trains, and it is in accordance with the teaching of those who are expert in the management of air brakes.

The great increase in the volume of freight traffic on nearly all the railroads of the country, which was noted a year ago, has continued unabated, and the burdens which this pressure of work has put upon the officers and employees in the freight-train department have hindered them from giving due attention to brakes. The Commission finds it impossible, therefore, to make any definite statement as to the improvement in the general situation. The absence of adequate and suitable inspection and testing facilities at large freight yards is still to be remarked on some of the most important railroads. Bearing in mind that the air brake is a delicate apparatus, and that therefore inspection, cleaning, and the maintenance of tight-jointed pipes are vital elements in safe and satisfactory service, this lack of yard plants calls for particular attention.

The inspectors' reports show, as they did a year ago, inefficient practice in the use of air-brake defect cards; lax discipline, permitting trains to be pulled apart when the brake hose connection has not been separated; and very general neglect of the retaining valve.

There is one class of casualties to trainmen, those due to freight trains breaking in two, in which both the couplers and the breaks usually figure in the statement of causes. A statement has been made up from the accident reports (published in Accident Bulletin No. 4, see Appendix) showing the number of persons killed and injured in accidents due to trains parting. The parting is due to some fault in the coupler, but in compiling this information it appeared that most of the derailments which result from this cause are aggravated by the automatic

action of the air brake; and this automatic action causes damage chiefly because a part of the cars in each train have no air brakes, or have air brakes which are not connected to the engine and so are not used. A regrettable circumstance in connection with this class of accidents is the almost universal neglect of careful records. Of the large number of cases of this kind reported, only a small percentage are reported as due to a specific cause. More than two-thirds of the damage done is in cases reported as due to some "cause unknown." As mentioned in a preceding paragraph, two railroad companies have published their records of trains parted, and in both cases it is shown that the causes of accidents of this kind can in nearly every case be discovered. In view of the large aggregate of damages caused by accidents of this kind, and especially in view of the constant liability (on roads of more than one track) of disaster to a passenger train in consequence of a comparatively slight accident to a freight train on an adjacent track, there is pressing need of better records on all railroads handling a large volume of freight, for the purpose of making a more thorough study of the causes of coupler failures.

Two other features reported by the inspectors which have to do with both couplers and brakes are lack of repair material and "local agreements." Repairs of foreign cars are made with improper material because the right material can be got only at great labor, delay, and inconvenience. By local agreements a road in possession of a defective foreign car will disclaim responsibility, claiming that the car is soon to be returned to the line from which it has just been received.

To promote a more general compliance with the spirit of the safety-appliance law in the use of air brakes, the Commission recommends the passage of an act forbidding the running of trains in which less than one-half of the cars are equipped with power brakes in operative condition and suitably connected to the engine, and empowering the Commission to issue a general order or orders requiring the use of power brakes on more that 50 per cent of the cars in a train, as and when it shall find such increased use to be practicable, the percentage to be specified in the order or orders. The belief has been expressed in some quarters that such an act should also authorize the Commission, in the case of any particular road, and after due hearing and investigation, to issue an order permitting, for a specified limited time, the running of trains with power brakes in use on less than 50 per cent of the cars therein; and that such orders should be authorized to prevent any possible hardship due to unforeseen exigencies.

The foregoing recommendation looking to the more general use of power brakes appears to be in accordance with facts and views which were brought out at the hearings before the Senate and House committees at the last session of Congress. In regard to the other features of the bill that was then considered (S. 3560, Fifty-seventh Congress), the Commission recommends as follows: That provisions relating to

automatic couplers, grab irons, and the height of drawbars, be made to apply to all locomotives, tenders, cars, and similar vehicles, both those equipped in interstate commerce and those used in connection therewith (except those trains, cars, and locomotives exempted by the acts of March 2, 1893, and April 1, 1896); and that the size, length, and location of grab irons shall be prescribed by the Commission (after hearing). The requirement regarding air brakes should not take effect until ninety days after the passage of the act, and those regarding the other features not until July 1, 1903.

The status of railroad employees who are injured while coupling or uncoupling cars on which the couplers are defective, is the subject of a decision by the United States circuit court for the northern district of Iowa in June last, (Voelker *v.* C. M. & St. P. R. Co., 116 Fed. Rep. 867). In this decision it was held that the act of March 2, 1893, requiring cars to be equipped with automatic couplers, applies to a car designed for interstate traffic, though at the time of complaint it may be moving without lading.

In Johnson *v.* Southern Pacific Company (117 Fed. Rep., 462) the eighth United States circuit court of appeals held, in August last, that the equipment of a car with automatic couplers which will couple automatically with those of the same kind is compliance with the safety-appliance act of March 2, 1893, and that the act does not require cars used in interstate commerce to be equipped with couplers which will couple automatically with cars equipped with automatic couplers of other makes. If this ruling should be upheld on appeal it would have the effect of nullifying a main object of the statute, which is to secure such uniformity in applied automatic coupling devices as to permit all cars in a train to be coupled and uncoupled without requiring men to go between the cars. The act in terms prohibits any carrier from hauling or permitting to be "hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars." Carriers are left free by the statute to use any kind of automatic coupler they see fit, the sole and governing restriction being that, whatever kinds of coupler may be used, no cars shall be hauled or used on the line which do not couple automatically by impact, or can not be uncoupled without men going between the cars; and this applies to the hauling of all cars, whether owned by the carrier operating the road or by other carriers. Plainly, if carriers use different types of couplers which do not work automatically with each other, the law is violated when a carrier undertakes to haul two cars so equipped in the same train. This was pointed out by the Commission in its report to Congress for the year 1893, and has been generally understood and followed by carriers throughout the country.

It will readily be perceived that the above-mentioned rule announced by the court of appeals is in conflict with that construction of the statute, and that it would, if finally affirmed, permit the use of many different types of couplers, each type working automatically with those of the same description, but not with any other, and authorize the hauling of cars in the same train which could not be coupled or uncoupled without the aid of men going between the cars. The case was probably presented to the court with main reference to facts relating to the plaintiff's claim for damage, and with but little attention to the great interest of railway employees and the public generally in an interpretation of the law involving the hauling of cars in the same train not equipped with couplers coupling automatically with each other.

That a remedial statute which has proved of such benefit to a large and important number of citizens should be rendered nugatory by a decision in a case brought by an individual to recover personal damages without the Government's representative being heard upon a proper construction of the statute is unfortunate, to say the least, and an effort will be made to have it properly presented.

The validity of the statute of the State of Iowa which makes a railroad corporation liable to all persons, including employees, for personal injuries due to negligence of its servants, has been affirmed by a decision of the United States circuit court for the northern district of Iowa (O'Brien *v.* C. & N. W. R. Co., 116, Fed. Rep. 502). An express messenger was killed in a derailment; and in the defense made by the railroad company, in a suit for damages, it was averred that no liability existed, because the messenger, O'Brien, had in writing released the express company and the railroad company from liability for injury or death resulting from the gross or other negligence of the railroad or its servants. The court holds the contract to be invalid under the statute, thus making the railroad company liable for the death of an express messenger when such death is due to the negligence of an employee of the railroad.

ACCIDENT REPORTS.

The act of March 3, 1901, requiring common carriers engaged in interstate commerce by railroad to report accidents monthly to the Commission, has been in operation since July 1, 1901, and the Commission has issued four quarterly bulletins (for the four quarters of the fiscal year ending June 30, 1902) giving summary tables of the statistical information derived from the railroad companies' reports, and particular information concerning the causes of some of the more serious accidents.[a]

[a] See Appendix for tables showing totals for the year.

So far as casualties to persons are concerned, this law does not require any statistics which were not before required in the railroad companies' annual reports; the new requirement is that the causes shall be reported in detail. The two classes of accidents to employees which have for years received the most attention, because of their importance, are "coupling and uncoupling" and "falling from cars or engines." These have been made the subject of Tables Nos. 3 and 4, in each quarterly bulletin, classifying the causes in as much detail as was practicable. These tables serve to put on record useful information which, until their appearance, was to a considerable extent matter of conjecture, or concerning which different observers held conflicting views.

In Table No. 3 the causes of coupling accidents are divided into 21 classes; and this table, published quarterly, makes it possible to see what proportion of the accidents reported occur by reason of the use of couplers which are not automatic, as in coupling an engine to a train (the law not explicitly requiring automatic couplers on engines and tenders); when coupling with link and pin, as has occurred on certain narrow-gauge railroads; when using the hands in connection with an automatic coupler because it is not in working condition; when going between the cars to uncouple because the uncoupling rod is out of order; and other common causes. As in many other classes of accidents, a considerable proportion of these cases have to be classified as "Not clearly explained." In the table for the twelve months of the last fiscal year 29 out of 143 killed and 427 out of 2,130 injured are thus classified and unexplained.

Many men are injured while opening by hand the knuckle of a coupler on a moving car, when such car is dangerously near to another car. A considerable share of these cases is due to the negligence of the man himself, or to his lack of caution. There is a small but constant percentage of injuries occurring when a man undertakes to adjust a coupler laterally by pushing it or kicking it with the foot. This is often done when the car is in motion, and is manifestly a risky proceeding. "Going between cars on the inside of a curve" is an explanation which frequently occurs. This, in nearly every case, must be taken to indicate contributory negligence, for the added danger of going between cars on the inside of sharp curves as compared with the situation on a straight track is obvious.

In Table No. 4 the reports of accidents due to falling from cars are divided into eighteen classes. Here again it is necessary to group a large percentage under the head of "Not clearly explained;" but in these cases such a statement is often necessary. Sometimes in fatal accidents there are no witnesses, and in those which are nonfatal the victim himself may be unable to explain the circumstances.

Mention might be made in this connection of the danger attending the movement of the later designs of large-capacity cars in respect to their increased width. This reduces the clearance between tracks to such an extent that it is often difficult for a man to pass between the cars. Some of our inspectors say that they hear many complaints regarding this. While it does not, perhaps, properly come under the head of safety appliances, its relation to accidents to yardmen warrants a reference to it.

In the matter of collisions and derailments, the statistics which have been gathered under the law of 1901 constitute the first authentic record of the kind which has ever been published relating to the railroads of the whole country. The tables that were published for many years by the Railroad Gazette were incomplete and unofficial. The figures which have been compiled and published by the Commission for the twelve months ending June 30, 1902, show approximately two and one-half collisions and one and eight-tenths derailments per 100 miles of railroad per year, and the losses by these accidents, not including damage to freight or sums paid to persons for bodily injuries or on account of death, average, roughly, $3,800 per 100 miles of road annually. There is nothing to indicate that in the number of accidents or in their cost the showing per mile is materially worse than it would have been in many former years, but the publication of official data has drawn renewed attention to the subject. In three of the four accident bulletins that have been issued the magnitude of the losses and of the number of casualties due to collisions, and the urgent need of some thorough-going action looking to the prevention of this class of accidents has been emphasized by the publication of notes concerning the causes of specific collisions.

In Bulletin No. 2 there was given a list of the 27 most serious butting collisions occurring in the quarter ending with December, 1901. In these collisions 70 persons were killed and 234 were injured, and the money loss was $306,511, this sum being more than five-eighths of the damage caused by all of the butting collisions of that quarter. The principal causes occurring in this list are: Forgetfulness on the part of conductors and enginemen, who run their trains past stations at which, according to written orders in their pockets, they should stop; to overlooking one out of a number of orders which they hold; to mistakes in reading hours or names in written orders; to misreading watches or miscalculating time; to misreading time-tables and train registers; to carelessness in identifying trains at meeting stations, and other errors. Besides these errors of the men on the trains, there are mistakes by train dispatchers in issuing telegraphic meeting orders and by telegraph operators at stations in receiving, copying, sending, and delivering telegraphic orders which are sent by the dispatcher to the men in charge of trains and are repeated back to the dispatcher.

Collisions also occur by reason of complications following deliberate neglect to carry out certain safeguards, the negligent employees, like a bank clerk who "borrows" from his employer expecting to repay the loan, being unable to foresee the results of his omission of a seemingly unimportant duty.

In Bulletin No. 3 a similar table was given of 41 rear collisions, this number including in that class all which caused more than $2,000 damage each to property. In this class the causes are mostly "neglect in flagging" and approaching stations or water tanks at unduly high speed. Of the 41 cases, more than one-half—that is, 26—were due to one of these causes or to a combination of the two. Other causes were: Misplaced switches, neglect of the five-minute interval rule, engineman falling asleep, runaways on steep grades, and other negligence of the men in charge of the trains. Besides these there were 5 cases on lines where the block system is in use, 3 of them due to misconduct or neglect of signalmen, 1 to failure of an automatic signal, and 1 to misconduct of the engineman. As the remedy most generally approved for the great majority of these collisions is the adoption of the block system (which is discussed below), it is proper to remark here, in passing, that these 5 cases, which occurred not withstanding the fact that the block system was in use, do not materially affect the argument in its favor. In the first place, the block system, even when imperfectly administered or applied, is universally agreed to be superior to the time-interval system; and, secondly, the many investigations that have been made into collisions occurring on lines worked by the block system have shown in nearly every case that the error or errors leading to the collision have been due to palpable deficiencies in regulations or in discipline, rather than to any fault in the system.

In Bulletin No. 4 a list was given of the 26 most costly collisions in that quarter (to June 30, 1902), including all classes — rear, butting, and miscellaneous. This number (26) represents cases involving damage of $5,000 or over, each, those below $5,000 being excluded to bring the list within readable compass.

The totals of this list are: Persons killed, 30; injured, 187; damage to cars, engines, and roadway, $228,597. This sum is a little more than one-fourth of the aggregate damage thus reported for all of the 1,094 collisions occurring in that quarter.

The enforcement of the regulations, the neglect or violation of which has caused these collisions, has long been the subject of extended discussion among railroad officers, but it can not be said that these discussions have resulted in marked improvement, except in so far as they have led to the adoption of the block system. Without the block system the movement of trains in safety depends, except where the speed of trains is very low, on the invariable execution of rigid rules regarding rights of superior trains over inferior trains,

on the correct calculation of time (on single track lines) at meeting stations, and on the readjustment of the relative rights of trains when one or a few trains (out of a large number) are delayed. But these rigid rules are disobeyed, or are inefficiently administered, as appears from the statement of causes just given, and the result is a large number of collisions every month.

No attempt has been made to compare the totals of one month or year with another, or of one railroad or section of country with another railroad or section, for the reason that no comparison would be useful except for long periods. Indeed, an extensive railroad, or the railroads of a whole State, may be free from disastrous or notable collisions for a whole year, or even longer; so that from a superficial view the conclusion might appear to be warranted that defects in methods or practice which formerly led to collisions had been done away with. Or, it might be claimed that the infrequency of serious collisions, as compared with the total number of possible chances of a collision, afforded ground for the conclusion that the rules now in force, which are very nearly uniform throughout the country, provide for all reasonable precautions, and that those collisions which do occur, from the negligence or incompetence of the men who are charged with the safety of trains, should be classed as due to those indefinable infirmities of the human mind which elude rules and discipline. It is generally conceded, however, that under the block system collisions are very infrequent as compared with the number occurring under the time-interval system. The block system is now universal on the passenger lines of the railroads of England, Scotland, Ireland, and Wales, and the high degree of safety enjoyed by the passengers on those railroads is well known. In the fifteen months ending March 31, 1902, as appears from the accident records published by the board of trade, not a single passenger was killed in those countries by a train accident.

The block system is in use on about 25,000 miles of railroad in the United States, as appears from statistics published by the American Railway Association in April last. This is only about one-eighth of the whole railway mileage of the country, but it embraces many of the most important lines. The system has been introduced gradually during the past fifteen or twenty years. In many cases its introduction on a particular line or division of railroad has followed soon after a disastrous collision on that line, a fact which is quite significant. The term "block system" means simply a method whereby, by the use of the telegraph, telephone, or electric bells, or by automatic apparatus, each train is prevented from leaving a certain point until the last preceding train has passed beyond a certain point farther on. It is introduced primarily for the purpose of preventing rear collisions, though where it is desired to run trains one after another very frequently the

block system becomes a means of increasing the capacity of a railroad, as without it there must be an interval of time between each two trains of from five to ten minutes. With the block system this interval may be reduced one-half or more. On single-track railroads the system is also a preventive of collisions between trains moving in opposite directions toward each other, as the men or apparatus at each end of each block section, put there to protect following trains, are equally available for the protection of opposing trains. Without the block system, protection from rear collisions depends on elaborate instructions for the use of red flag (or lantern), torpedoes, and fuses, which instructions are somewhat difficult to define and, as appears from the accident records, often hard to enforce; and protection from butting collisions depends on the exercise on the part of enginemen and conductors of the most intelligent and unceasing vigilance, and on the exercise of the utmost care by the train dispatcher, who, by the use of the telegraph, regulates the movements of those trains—a large proportion of the whole—for which the time-table does not prescribe meeting points.

The 41 rear collisions before referred to as having been reported on in the accident bulletin occurred on 23 different railroads, and every one of the ten geographical groups is represented. A record for a whole year would bring many more railroads into the list. Five of the 41 cases were due to "failures in block working," a fact which, as we have remarked in a preceding paragraph, is not to be set down to the discredit of the principle.

No statistics are available by which to make an accurate estimate of the relative safety of the block system as compared with the old or time-interval system, and, indeed, no intelligent comparison is possible without data concerning density of traffic and concerning the personnel of the operating department, which have never been gathered. Such comparisons have been made, however, by railroad managers, from limited data, and the increasing use of the block system during the past few years, which is a result of these comparisons, gives evidence of the superiority of that system.

The salient facts concerning the year's record of collisions are that hundreds of persons are killed and thousands are injured; that the losses recorded amount to three or four millions of dollars yearly, and that the personal damages and bills for freight destroyed aggregate millions more, perhaps a sum equal to that recorded; and that the errors and lapses which lead to these collisions are, in the great majority of cases, of a kind which do not occur (and practically can not occur) when trains are run under the block system. In spite of the efforts of railroad officers and the employees' associations to improve the training and discipline of the men who manage the trains, the records appear to show no decrease in the number or proportion of collisions; and there is no diminution in the number of persons killed and injured

in collisions as compared with preceding years. The block system is in use on many of the double-track trunk lines and also on some single-track lines; but there are other lines, equally important as regards the necessity of providing the best safeguards, and the owners of which are as fully able to provide them, where it is not used. No explanation is apparent for this somewhat anomalous state of things, unless it be that where the system is not used the management of the company takes a radically different view of the economy of providing the most perfect safeguards from that taken by those managements which do provide them. That the block system would be much more extensively used if it were not so costly is obvious from the practice of those companies which employ it on some of their lines but not on all, or on certain lines in busy seasons but not throughout the year. There is difficulty in formulating a rule for establishing or requiring the block system, for the same reason that it is difficult to maintain a rigid sentry line around a military camp in time of peace; the dangers to be guarded against seem too remote to demand immediate attention and energetic action.

In thus pointing out the need of the more general use of the block system, it is proper to take notice of the fact that in the use of automatic block signals there has been a remarkable increase during the past two or three years. The number of miles of railroads equipped has increased more than 25 per cent in one year. Automatic signals, as a rule, however, are used only on lines carrying a large volume of traffic; and on the very large mileage of railroads doing a smaller business, where, according to all precedents, the block system, to be adopted, if any is adopted, must be the manual system, this encouraging indication does not appear. The automatic system is costly to install, and so is looked upon by the managers of most lines of light traffic as an unwarranted luxury. The nonautomatic ("manual") is comparatively inexpensive so far as regards the installation of fixtures, but on nearly or quite every railroad not now using a block system it would require an increase of 25 per cent more or less in the force of signalmen (or telegraph operators) employed, and therefore is looked upon as expensive in operation.

The accident reports made to the Commission disclose that in numerous instances railway employees are required to be continually on duty, or voluntarily remain on duty, for such an unusual number of hours as appears to be excessive and warrants the inference that accidents more or less frequently result from that cause. The work of operating trains in which these men are engaged is exacting and requires a high degree of mental and physical vigor. If their powers of mind and body are impaired by protracted service which exceeds the limits of ordinary endurance, there is liable to be a loss of that efficiency and alertness upon which their own safety, and the safety of the

traveling public, so constantly depends. From the data compiled in Accident Bulletins 3 and 4 it appears that in seven cases of a serious character the men claimed to be at fault had fallen asleep on duty or had been constantly on duty from fifteen to twenty-five hours prior to the happening of the accident. Indeed, the large number of instances reported in which men are shown to have been at work much longer than the usual hours of employment indicates that this is a matter of actual gravity in which the public and the employees are deeply concerned. While the Commission has little information beyond the statements made in these reports, which are limited to cases where accidents have occurred, and is not prepared to make a specific recommendation, there is no doubt that the facts here referred to deserve consideration by the Congress.

As was pointed out in the last annual report of the Commission, the monthly accident reports are confined to (1) collisions, (2) derailments, and (3) casualties to employees and passengers. The statute does not authorize the inclusion in these reports of miscellaneous accidents to trains (other than collisions and derailments) or casualties to trespassers, to persons at highway crossings, or miscellaneous persons on railroad premises. These other classes of casualties are, however, included in the statistics which the railroad companies give in their annual reports, as required under the twentieth section of the act to regulate commerce. As the compilation of these accident statistics for the annual reports would be unnecessary, if the monthly reports were made to include all classes, it has been suggested that the monthly reports should be amplified to include the whole. This would make only an insignificant addition to the clerical work required in making monthly reports, and there would be no additional burden on the railroads, except the copying of the statement of each accident, for, as we may fairly assume, the requisite data are already gathered and recorded in each railroad company's office. A large majority of the principal companies have already expressed a willingness to report the additional data required on the monthly sheets, and it is hoped that favorable expressions will soon be received from all.

STATISTICS OF RAILWAYS.

[Final report for year ending June 30, 1901.]

Following is an abstract of the Fourteenth Statistical Report of the Interstate Commerce Commission, prepared by its statistician, being a report for the year ending June 30, 1901:

MILEAGE OF RAILWAYS.

On June 30, 1901, the total single-track railway mileage in the United States was 197,237.44 miles, this mileage having increased

during the year 3,891.66 miles. This increase is greater than that for any other year since 1893, excepting 1900, when it was 4,051.12 miles. The 16 States and Territories for which an increase in mileage in excess of 100 miles is shown are as follows: Alabama, Colorado, Georgia, Illinois, Indiana, Iowa, Louisiana, Minnesota, Mississippi, Pennsylvania, South Carolina, South Dakota, Texas, West Virginia, Indian Territory, and Oklahoma.

Nearly all of the railway mileage of the country is covered by railway reports received by the Commission. For the year under consideration the operated mileage in respect to which detailed returns were made was 195,561.92 miles. This mileage includes 5,606.08 miles of line on which trackage privileges were granted. Including tracks of all kinds the aggregate length of railway mileage was 265,352.29 miles, which was classified as follows: Single track, 195,561.92 miles; second track, 12,845.42 miles; third track, 1,153.96 miles; fourth track, 876.13 miles, and yard track and sidings, 54,914.86 miles. From these figures it is noted that there was an increase of 6,567.99 miles in the aggregate length of all tracks, of which 2,761.84 miles, or 42.05 per cent, were due to the increase in yard track and sidings.

CLASSIFICATION OF RAILWAYS.

The number of the railway corporations included in the report was 2,057. Of this number, 1,015 maintained operating accounts, 803 being classed as independent operating roads and 212 as subsidiary roads. Of roads operated under lease or some other form of contract 328 received a fixed money rental, 173 a contingent money rental, and 272 were operated under some other form of agreement or control. During the year railway companies owning 8,969.55 miles of line were reorganized, merged, consolidated, etc. The corresponding item for 1900 was 14,318.13 miles.

EQUIPMENT.

On June 30, 1901, there were 39,584 locomotives in the service of the railways, which was 1,921 more than were in use the preceding year. Of the total number of locomotives, 10,184 are classed as passenger locomotives, 22,839 as freight locomotives, 5,959 as switching locomotives, the remainder, 602, not being classified.

The total number of cars of all classes in the service of the railways on the date stated was 1,550,833, there having been an increase of 99,995 in rolling stock of this class. Of the total number of cars, 35,969 are assigned to the passenger service, 1,464,328 to the freight service, and 50,536 to the immediate service of the railways. These figures, however, do not include cars owned by private companies and firms that are used by railways, as no returns for them are made to the Commission.

The report under review contains summaries to indicate the density of equipment and the extent of its use. It appears therefrom that the railways of the United States used on an average 202 locomotives and 7,930 cars per 1,000 miles of line, that 59,631 passengers were carried and 1,704,005 passenger miles accomplished per passenger locomotive, and that 47,692 tons of freight were carried and 6,439,736 ton miles accomplished per freight locomotive. Embracing in the term "equipment" both locomotives and cars, it is noted that the total equipment of railways at the end of the year was 1,590,417. Of this number 1,164,048 were fitted with train brakes, the increase in this item being 158,319, and 1,549,840 were fitted with automatic couplers, the increase being 145,708. Nearly all locomotives and cars in the passenger service were fitted with train brakes, and of 10,184 locomotives assigned to that service 8,870 were fitted with automatic couplers. Practically all passenger cars were fitted with automatic couplers. Regarding freight equipment, it is observed that nearly all freight locomotives were equipped with train brakes and 89 per cent of them with automatic couplers. Of 1,464,328 cars in the freight service, 1,071,758 were fitted with train brakes and 1,434,075 with automatic couplers.

EMPLOYEES.

The number of persons in the employment of the railways of the United States as reported for June 30, 1901, was 1,071,169, or an average of 548 employees per 100 miles of line. As compared with June 30, 1900, the number of employees increased 53,516, or 19 per 100 miles of line. The classification of these employees shows that 45,292 were enginemen, 47,166 firemen, 32,092 conductors, and 84,493 other trainmen. There were 47,576 switchmen, flagmen, and watchmen. Omitting 3,107 employees not assigned to any of the four general divisions of employment, it appears that the services of 38,816 employees were required for general administration, 343,717 for maintenance of way and structures, 206,418 for maintenance of equipment, and 479,111 for conducting transportation.

One summary in the report contains a statement of the average daily compensation of the 18 classes of employees for ten years beginning with 1892, and another gives the total compensation paid to more than 99 per cent of the railway employees for the fiscal years 1895 to 1901. The amount paid in salaries and wages to employees during the year ending June 30, 1901, it is seen, was $610,713,701, which was $33,448,860 in excess of what was paid during 1900. The compensation of the railway employees for 1901 is equivalent to 59.26 per cent of the operating expenses of the railway companies and 38.44 per cent of their gross earnings.

CAPITALIZATION OF RAILWAY PROPERTY.

Under "Capitalization of railway property" are included all forms of negotiable railway securities. It covers the various kinds of stock that are used, and all sorts of obligations, excluding only current or temporary liabilities. It is not claimed that the par value of these securities measures in any way the real value of railway property.

The amount of railway capital outstanding on June 30, 1901, was $11,688,147,091. This amount, on a mileage basis, represents a capitalization of $61,531 per mile of line. Of the total capital stated, $5,806,566,204 existed in the form of stock, of which $4,475,408,821 was common stock and $1,331,157,383 preferred stock. The amount which existed in the form of funded debt was $5,881,580,887. This amount comprised the following items: Mortgage bonds, $5,048,811,611; miscellaneous obligations, $545,780,485; income bonds, $218,872,068, and equipment trust obligations, $68,116,723. The amount of current or temporary liabilities, which is not included in the foregoing figures, was $620,401,849, or $3,266 per mile of line.

The amount of capital stock paying no dividends was $2,828,991,025, or 48.73 per cent of the total amount outstanding. Omitting equipment trust obligations, the amount of funded debt which paid no interest was $361,905,203. Of the stock-paying dividends, 8.82 per cent of the total amount outstanding paid from 1 to 4 per cent, 13.38 per cent paid from 4 to 5 per cent, 10.46 per cent paid from 5 to 6 per cent, 8.70 per cent paid from 6 to 7 per cent, and 6.67 per cent paid from 7 to 8 per cent. The amount of dividends declared during the year was $156,735,784, which is equivalent to a dividend of 5.26 per cent on the amount of stock on which some dividend was declared. The amount of dividends declared in 1900 was $139,597,972. The amount of mortgage bonds paying no interest was $198,675,968, or 3.94 per cent; of miscellaneous obligations, $78,072,489, or 14.31 per cent, and of income bonds, $85,156,746, or 38.91 per cent.

PUBLIC SERVICE OF RAILWAYS.

The number of passengers carried during the year ending June 30, 1901, as shown by the annual reports of railways, was 607,278,121, showing an increase for the year of 30,412,891. The number of passengers carried 1 mile—that is, the passenger mileage—was 17,353,588,444, there being an increase in this item of 1,314,581,227. There was an increase in the density of passenger traffic, as the number of passengers carried 1 mile per mile of line in 1901 was 89,721, and in 1900, 83,295.

The number of tons of freight carried during the year was 1,089,226,440, a decrease of 12,453,798 being shown. The number of tons of freight carried 1 mile—that is, the ton mileage—was 147,077,136,040.

The increase in the number of tons carried 1 mile was 5,477,978,770. The number of tons carried 1 mile er mile of line was 760,414. These figures show an increase in the density of freight traffic of 25,048 tons carried 1 mile per mile of line.

The report contains a summary of freight traffic analyzed on the basis of a commodity classification, and also a summary indicating in some degree the localization of the origin of railway freight by groups of commodities. A summary giving the mileage of loaded and of empty freight cars in 1901 appears for the first time in this report.

The average revenue per passenger per mile for the year ending June 30, 1901, was 2.013 cents. For the preceding year it was 2.003 cents. The revenue per ton of freight per mile was 0.750 cent, while for 1900 it was 0.729 cent. An increase in earnings per train mile appears for both passenger and freight trains. The average cost of running a train 1 mile also increased. The percentage of operating expenses to earnings was 64.86 per cent.

EARNINGS AND EXPENSES.

For the year ending June 30, 1901, the gross earnings from the operation of the railways in the United States arising from the operation of 195,561.92 miles of line were $1,588,526,037, being $101,481,223 more than for the fiscal year 1900. The operating expenses were $1,030,397,270, having increased in comparison with the year preceding $68,968,759. Gross earnings were in detail as follows: Passenger revenue, $351,356,265—increase, as compared with the preceding year, $27,640,626; mail, $38,453,602—increase, $701,128; express, $31,121,613—increase, $2,705,463; other earnings from passenger service, $8,202,982—increase, $41,960; freight revenue, $1,118,543,014—increase, $69,286,691; other earnings from freight service, $4,065,457—increase, $719,545; other earnings from operation, including unclassified items, $36,783,104—increase, $385,810. Gross earnings from operation per mile of line were $401 more than for the year ending June 30, 1900, being $8,123.

The operating expenses of the railways already stated were distributed among the four general divisions, as follows: Maintenance of way and structures, $231,056,602—increase, $19,836,081; maintenance of equipment, $190,299,560—increase, $9,125,680; conducting transportation, $565,265,789—increase, $36,149,463; general expenses, $42,566,553—increase, $3,237,788; undistributed, $1,208,766. The operating expenses amounted to $5,269 per mile of line, or $276 more than for the year immediately preceding. The report contains an analysis of the operating expenses for the year, in accordance with the 53 accounts embraced in the official classification of such expenses, with a statement of the percentage of each item of the classified expenses for the years 1895 to 1901.

The income from operation, or the amount representing the difference between gross earnings and operating expenses, commonly termed net earnings, was $558,128,767, this item showing an increase as compared with the previous year of $32,512,464. The average amount of net earnings per mile of line for the year ending June 30, 1901, was $2,854, and for 1900, $2,729. The amount of income received from sources other than operation was $179,746,449. Included in this amount are the following items: Income from lease of road, $111,637,907; dividends on stocks owned, $28,822,788; interest on bonds owned, $12,055,312, and miscellaneous income, $27,230,442. The total income of the railways, $737,875,216—that is, the income from operation, increased by income from other sources—is the item from which fixed charges and analogous items are deducted in order to ascertain the amount available for dividends. The total deductions of this character amounted to $496,363,898, leaving $241,511,318 as the net income for the year available for dividends or surplus.

The amount of dividends declared during the year (including $10,752 other payments from net income) was $156,746,536, leaving as the surplus from the operations of the year ending June 30, 1901, $84,764,782. The surplus for the year 1900 was $87,657,933. In the amount stated for deductions from income, $496,363,898, are embraced the following items: Salaries and maintenance of organization, $532,299; interest accrued on funded debt, $262,094,838; interest on current liabilities, $5,526,572; rents paid for lease of road, $112,644,822; taxes, $50,944,372; permanent improvements charged to income account, $31,938,901; other deductions, $32,682,094.

In the statistical report for the year 1900 was inserted a new summary of the taxes paid by railways, showing the taxes in gross and per mile of line as assigned to each State and Territory. In the present report this summary has been continued, and a second summary is introduced, showing taxes classified on the basis of payment according to the various laws under which railways are taxed. It is remarked that the task of classifying taxes according to the laws of the several States is a most difficult one, and that the general fact, to be read from the classification presented, is that ad valorem taxation instead of specific taxation is still the rule in the American system of taxing railways, and that in the application of this rule real and personal property rather than the valuation of stocks and bonds is made the basis for computation.

It is perhaps appropriate to explain that the foregoing figures relating to the income and expenditures of railways are compiled from the annual reports made to the Commission by two classes of railway corporations. Operating reports are filed by such companies as maintain full operating accounts, and financial reports by such companies as have leased their property to others for operation, their own income,

apart from that derived from investments, being the annual fixed or contingent rentals paid to them by their lessees, from which they make their own disbursements. In consequence, certain items of income and of expenditure are necessarily duplicated in comprehensive summaries which are compiled from reports of both classes. The source and extent of such duplications are clearly indicated in the report, which contains also an income account of the railways of the United States, considered as a system. Intercorporate payments are eliminated from this account presented in this form by making use, where appropriate, of balance amounts. The income account as represented in this form is here repeated.

Comparative income account of the railways of the United States, considered as a system, for the years ending June 30, 1901 and 1900.

Item.	Amount.				Increase.
	1901.		1900.		
Gross earnings from operation	$1,588,526,037		$1,487,044,814		$101,481,223
Clear income from investments	33,488,648		32,526,016		962,632
Gross earnings and income		$1,622,014,685		$1,519,570,830	102,443,855
Operating expenses	1,030,397,270		961,428,511		68,968,759
Salaries and maintenance of leased lines	532,299		520,102		12,197
Total		1,030,929,569		961,948,613	68,980,956
Net earnings and income		591,085,116		557,622,217	33,462,899
Net interest on funded debt	252,594,808		242,998,285		9,596,523
Interest on current liabilities	5,526,572		4,912,892		613,680
Taxes	50,944,372		48,332,273		2,612,099
Total		309,065,752		296,243,450	12,822,302
Available for dividends, adjustments, and improvements		282,019,364		261,378,767	20,640,597
Net dividends		131,626,672		118,624,409	13,002,263
Available for adjustments and improvements		150,392,692		142,754,358	7,638,334

RAILWAY RECEIVERSHIPS.

The number of railways in the hands of receivers on June 30, 1901, was 45, from which it appears that there was a net decrease of 7, as compared with the corresponding date of the year previous. The number of railways placed in the charge of receivers during the fiscal year 1901 was 10, and the number of railways taken from the management of receivers was 17. The roads under receivers operated a mileage of 2,497.14 miles, of which 2,028.57 miles were owned by them. Of the roads managed by receivers 2 had an operated mileage in excess of 300 miles, 4 between 100 and 300 miles, and 31 less than 100 miles. Returns for all roads in the custody of the courts are not always available, but as nearly as ascertained it appears that the capital stock rep-

resented by the railways in the charge of receivers on June 30, 1901, was $49,478,257, funded debt $54,748,662, and current liabilities $14,183,230. These figures show a decrease in capital stock represented, as compared with 1900, of $58,618,598 and in funded debt of $52,644,360.

RAILWAY ACCIDENTS.

The summaries of railway accidents contained in the report for the most part differ from those appearing in reports for prior years, being presented in greater detail, and especially for the reason that accidents are classified under the general heads of "Accidents resulting from the movements of trains, locomotives, or cars," and "Accidents arising from causes other than those resulting from the movement of trains, locomotives, or cars." Accident statistics are of peculiar interest because they bear a close relation to State and national legislation for the protection of railway employees and the public.

The total number of casualties to persons on account of railway accidents, as shown for the year ending June 30, 1901, was 61,794, the number of persons killed having been 8,455, and the number injured, 53,339. Of railway employees, 2,675 were killed and 41,142 were injured.

The casualties occurred among three general classes of employees, as follows: Trainmen, 1,537 killed, 16,715 injured; switchmen, flagmen, and watchmen, 175 killed, 1,190 injured; other employees, 963 killed, 23,237 injured. The casualties to employees resulting from coupling and uncoupling cars were: Employees killed, 198; injured, 2,768. The corresponding figures for the year 1900 were: Killed, 282; injured, 5,229. The casualties connected with coupling and uncoupling cars were assigned as follows: Trainmen killed, 163; injured, 2,377; switchmen, flagmen, and watchmen killed, 25; injured, 284; other employees killed, 10; injured, 107. The casualties due to falling from trains, locomotives, or cars in motion were: Trainmen killed, 376; injured, 3,147; switchmen, flagmen, and watchmen killed, 26; injured, 222; other employees killed, 61; injured, 452. The casualties due to jumping on or off trains, locomotives, or cars in motion were: Trainmen killed, 65; injured, 1,983; switchmen, flagmen, and watchmen killed, 11; injured, 144; other employees killed, 60; injured, 423. The casualties to the same three classes of employees from collisions and derailments were: Trainmen killed, 464; injured, 2,508; switchmen, flagmen, and watchmen killed, 11; injured, 81; other employees killed, 60; injured, 566.

The number of passengers killed during the year was 282, and the number injured 4,988. The corresponding figures for the previous year were 249 killed and 4,128 injured. As a result of collisions and derailments 110 passengers were killed and 2,208 injured. The total number of persons other than employees and passengers

killed was 5,498; injured, 7,209. These figures include casualties to persons classed as trespassers, of whom 4,601 were killed and 4,858 were injured. The total number of casualties to persons other than employees from being struck by trains, locomotives, or cars were 4,135 killed and 3,995 injured. Casualties of this class occurred as follows: At highway crossings, passengers killed, 3, injured, 11; other persons killed, 828, injured, 1,343; at stations, passengers killed, 21, injured, 344; other persons killed, 378, injured, 553; and at other points along track, passengers killed, 6, injured, 27; other persons killed, 2,899, injured, 1,717. The summaries giving the ratio of casualties show that 1 out of every 400 employees was killed, and 1 out of every 26 employees was injured. With reference to trainmen, including in this term enginemen, firemen, conductors, and other trainmen, it is shown that 1 was killed for every 136 employed and 1 was injured for every 13 employed. One passenger was killed for every 2,153,469 carried and 1 injured for every 121,748 carried. Ratios based upon the number of miles traveled, however, show that 61,537,548 passenger-miles were accomplished for each passenger killed and 3,479,067 passenger-miles accomplished for each passenger injured. The corresponding figure in these latter ratios for the year ending June 30, 1900, were 64,413,684, and 3,885,418 passenger-miles for each passenger killed and each passenger injured, respectively.

PRELIMINARY REPORT ON THE INCOME AND EXPENDITURES OF RAILWAYS FOR THE YEAR ENDING JUNE 30, 1902.

To present concisely the results of the operations of the railways in the United States, a preliminary report on the income account of operating lines is annually published by the Commission, this report being prepared by its statistician in advance of the full report on railway statistics.

For the fiscal year ending June 30, 1902, this preliminary report includes returns for 663 operating roads received by November 15. The railway mileage represented by these returns was 195,385.53 miles, or probably 98 per cent of the mileage for which returns will be embraced in the final report when issued.

The following abstract from the preliminary report gives the more important items shown therein:

The gross earnings of the railways for the year ending June 30, 1902, on the mileage stated above, were $1,711,754,200. For the year ending June 30, 1901, the gross earnings on 195,561.92 miles of line, as shown in the final report of that year, were $1,588,526,037. These amounts indicate a probable increase in the gross earnings of the railways of the United States during the year 1902 in excess of $125,000,000. Referring to earnings in detail, it is noted that earnings from the passenger service amounted to $472,429,165, or 27.60 per cent of

the total gross earnings; earnings from the freight service amounted to $1,200,884,603, or 70.16 per cent of the total earnings. In total earnings are included also $38,440,432, representing various minor items incidental to operation.

The average of gross earnings per mile of line, as shown by this preliminary report, was $8,761. This amount is $638 greater than the average given in the final report for the year ending June 30, 1901, the average for that year being $8,123, and this, it may be remarked, was considerably in excess of the average for any preceding year for which statistical reports have been published by the Interstate Commerce Commission. The earnings per mile of line for the last fiscal year properly credited to the passenger service were $2,418; the earnings per mile of line credited to the freight service were $6,146. It should be said that some or all of the averages based on the figures compiled in this advance report may be slightly diminished when the final report is made on account of the effect of the inclusion of returns for a number of roads which earn relatively small amounts per mile of line.

The aggregate of operating expenses for the year covered by this preliminary report was $1,106,137,405. This represents an expenditure of $5,661 per mile of line, being an increase of $392 per mile as compared with the previous year. The ratio of operating expenses to earnings, 64.62 per cent, is smaller than it was for 1901, when it was 64.86 per cent. This ratio will not be greatly altered as the result of complete compilation.

The net earnings, or income from operation, of the railways included in this report were $605,616,795. Comparison of this amount with the corresponding item of the previous year shows an increase of $51,395,421. The net earnings per mile of line, as shown by this preliminary report, were $3,100, which exceeds the net earnings per mile of line for the previous year by $246.

The operating railways, to which this advance report pertains, received $82,714,492 from sources not directly connected with operation, such as investments in stocks and bonds of railway and other corporations and from miscellaneous sources. This amount, combined with the net earnings stated, makes a total of $688,331,287, being the sum at the disposal of the railways for corporate expenditures and surplus. To obtain the surplus which remains from the operations of the year, the following items must be deducted: Interest on funded debt accrued, rents of leased lines, permanent improvements charged to income, taxes (which were $49,426,675), dividends, and certain other expenditures miscellaneous in character. The aggregate of these deductions amounts to $609,145,920, from which it appears that the surplus remaining from the operations of the year ending June 30, 1902, was $79,185,367. The surplus for the preceding year was $84,764,782. In the report for the year ending June 30, 1897, a deficit is shown of $6,120,483.

The dividends declared during the year covered by this report amounted to $150,685,959. The dividends of corresponding roads for the year ending June 30, 1901, disregarding unimportant exceptions, were $120,851,269, from which it appears that the returns to the stockholders of the roads in question were nearly $30,000,000 greater than in the year before. It may be proper to repeat what has been explained in previous reports, that the amount of dividends stated in these preliminary reports, which are compiled from the reports of operating roads only, does not represent the entire amount of dividends declared on the stocks of all the railway companies in the United States, for the reason that the dividends declared by such companies as have leased their property to others for operation are paid from their own income, which is, apart from the small portion derived from investments, essentially the fixed or contingent rental paid to them by their lessees, and consequently the dividends of subsidiary leased lines can not be included in reports that relate to operating lines only. As an aid in estimating the amount of dividends which will be shown in the final compilation, it may be remarked that, out of an aggregate of $156,735,784 paid in dividends during the year ending June 30, 1901, something in excess of $35,000,000 was distributed to stockholders through the agency of leased lines.

PER DIEM RATES FOR CAR SERVICE.

By the action of the American Railway Association last April the interchange of freight cars between the different railroads of the country has for the first time been put on a business basis, a change which appears to be a definite reform and in the interest of efficient service and upright dealing between carriers. Ever since cars began to be sent from one railroad to another payment for the borrowed service has been made by the mile, and abuses have been frequent. The owner of the car was powerless either to get his car returned or to test the accuracy of the records by which he was paid for its use, so that cars were often kept out of his possession for months, being used by the consignees as free storehouses for freight, or by the borrowing railroad company in local service at an unreasonably low rental, or, as has occurred in consequence of errors in the accounts, without any rental at all. In a few cases lenders have been defrauded on a large scale by deliberate dishonesty. The interchange of standard-gauge house or box freight cars is now almost wholly unrestricted throughout the United States, so that convenient arrangements for records and payments are a necessity. Every road is a constant borrower from and lender to its immediate connections, and frequently from and to lines in distant States.

The reform consists in the adoption of a rule to pay by the day instead of by the mile. The owner can himself keep an account of the

number of days a car is absent from the home line—thus insuring accuracy; while the fact that a borrowed car must be paid for at the same rate when standing idle as when used in profitable service spurs the borrower to promptly return it when it has completed the service for which it was borrowed. The old plan put a premium on dilatory return, while the new plan puts a premium on prompt return. A secondary but important result, and one which directly affects the public, is the increased efficiency of the demurrage bureaus in the principal cities. These bureaus, supported by the railroads jointly, supervise the collection from consignees of a storage charge of $1 a day for each car on bulk freight not taken out of the cars within a prescribed time—48, 72, or 96 hours—and thus have reduced delays; but until the per diem principle was applied between railroads, as well as between the railroad and the customer, the demurrage rule was often too lax for the best results. A "favor" to a customer in this matter might be equivalent to a reduction of the transportation rate, and the rival interests of competing carriers led to many irregularities.

The interchange per diem rate is 20 cents per car per day. This is generally regarded as too low, but it is necessary to make a low charge in order to secure agreement among so many and so diverse interests. Even this inadequate sum is said to be higher from 30 to 50 per cent than the average income per day formerly received by the principal companies under the mileage system. The present arrangement is based on contracts for one year, to July 1, 1903, made through the secretary of the American Railway Association. Though some companies which both borrow and lend on a large scale will suffer a net loss by the adoption of the new method—unless they readjust their relations with connecting lines or advance the price to the consignee for certain switching and other services—it is confidently believed that the reform will be permanent.

The weakness of the new plan is in its rigidity. The same charge applies alike to cars of 15 tons capacity or of 50 tons, and it is the same per day for a 10-mile journey as for one of 2,000 miles; but the same weakness concerning capacity existed under the mileage plan. It is also true that under the new plan, as under the old, a borrower may unfairly retain a foreign car for local service by paying for it, and thus enjoy the use of another road's car at a ridiculously low rental; but this evil is partly met by the requirement that a higher charge ($1 a day) shall be paid after a car has been kept by the borrower more than thirty days.

PRIVATE CARS.

In the agreement to abolish mileage payments the railroads were unable to include cars owned by private parties, such as dressed-beef and fruit shippers, the coal and other mining companies, the cattle-car and oil-car companies, and the one fast-freight line which runs cars not

owned by the railroads. This failure to agree perpetuates a long-standing abuse, which has been referred to in previous annual reports of the Commission. Many of these cars, particularly refrigerator cars for fruit and for fresh meats, and live-stock cars, are used mostly for long journeys made at maximum speed, so that a mileage charge far below the average would provide a very liberal income on the amount invested in the car, while the rental actually paid on such cars is usually 7½ mills a mile, or 1½ mills higher than the railroad companies paid to each other under the mileage system. Thus the shipper who provides his own cars receives such large sums in mileage that the excess is substantially equivalent to a rebate on the transportation charges, and to that extent a discrimination against shippers of similar goods who do not furnish cars. Furthermore, shippers who send out many carloads from competitive points, like Kansas City and Chicago, are able to use, and by common report have used, their cars as a means of securing reductions in the transportation rate. A carrier refusing to pay the mileage which a shipper demands is threatened with the loss of the traffic; and in times of slack business the abuse has in many cases been aggravated by the sending out of cars loaded to much less than their full capacity, for the purpose of securing mileage on cars which would otherwise stand idle.

It is understood that the proposition to abolish mileage on private cars was blocked by time contracts under which certain carriers had agreed to pay mileage rates for shippers' cars. While many railroad managers frown on these contracts because of their inequitable nature, and endeavor to dissuade competing carriers from making them, others assert that in spite of the high charges which they have to pay for these special cars they are obliged to continue the arrangement because the traffic for which the cars are required is so intermittent in character that it would be still more costly for the railroad company to provide the cars itself. A railroad needing several hundred refrigerator cars for two or three months in the year, and having no use for them during the remaining nine or ten months, finds that to own the necessary supply of such cars would be very expensive. In so far as this is true the "private-car evil" may not be altogether an evil, but there still remains the question of the abolition of the abuses which we have mentioned. The magnitude of the interests involved is indicated by the statement recently made by Mr. J. W. Midgley, a competent observer, that the estimated number of private cars in use in the freight service of the country, embracing refrigerator, box, tank, stock, coal, flat, furniture, poultry, and unclassified, is 130,846—a number equal to nearly one-tenth of the total freight cars owned by the railroads. The estimated value of these cars is $84,554,750. During the year ending June 30, 1901, the carriers reporting to the Commission their payments for the use of private

cars, paid out for this purpose a sum in excess of $12,000,000. The owners of these cars, collecting these enormous sums, and able to exert an influence on freight rates affecting many millions of dollars in transportation charges, are not common carriers and are not subject to the act to regulate commerce, and no public authority supervises their accounts. This is a matter of grave importance which may well engage the attention of the Congress.

NATIONAL ASSOCIATION OF RAILWAY COMMISSIONERS.

The fourteenth annual convention of the Association of Railway Commissioners was held in the city of Charleston, S. C., on February 11 and 12, 1902. Representatives from sixteen States and from this Commission were in attendance. The Association of American Railway Accounting Officers and the Street Railway Accounting Association of America were also represented. Addresses were made by the chairman of the association, by Gen. J. W. Latta, secretary of internal affairs of Pennsylvania, and by A. H. Plant, auditor of the Southern Railway Company.

Committee reports were presented on the following topics: Classification of operating and construction expenses of electric railways; legislation; delays attendant upon enforcing orders of railroad commissions; statistics.

A resolution was adopted recommending to the legislatures of the several States the passage of laws providing for the prohibition of grade crossings outside of municipalities, in all future construction of railways, where steam railway lines cross the lines of other steam railways or where electric railways cross the lines of steam railways. It was also recommended that such reasonable and conservative legislation be effected as shall gradually eliminate grade crossings which now exist between steam and street or electric railways.

At the convention prior to this, action was suspended on so much of the report of the committee on legislation as related to its recommendation that this Commission be empowered to adopt and publish a national freight classification. This question was specially referred to the committee on legislation of this convention for investigation and report. It was recommended by this committee that the National Government, either through this Commission or by some other means, establish and put in effect a uniform classification, unless the carriers within a given period shall have made one for themselves. This resolution was adopted by the association.

The special committee to whom was referred the matter of a certain proposed blacklisting bureau reported a resolution condemning efforts made to form any association to prepare and circulate blacklists of railway employees, and the resolution was unanimously adopted.

The committee on delays attendant upon enforcing orders of railroad commissions recommended in its report the following resolutions:

Resolved, That the United States Congress be urged by this convention to pass a law making all the orders of the Interstate Commerce Commission effective and in full force after thirty days from the date thereof, or at such longer time as may therein be specified, unless temporarily suspended or finally vacated as a result of suitable proceedings for review brought by defendant carriers in the circuit court of the United States in the manner and according to the procedure recommended by the Commission in its Eleventh Annual Report as an amendment to section 16 of an act to regulate commerce, the said amendment providing for the advancement of all cases between the Interstate Commerce Commission and the railroads in all the Federal courts.

That Congress be, and is hereby, requested to enact such laws as may be necessary to have all causes involving the order or decision of any State railroad commission, or the decision of any court affirming, reversing, or modifying the same, commenced in or removed by an appeal or writ of error to any Federal court, advanced on the calendar of said court, and heard next to criminal cases.

That properly attested copies of this report and recommendations be forwarded to the presiding officers of the two Houses of Congress.

An interesting paper entitled "The genesis of railroading," being a short history of the first railroads ever built in England and in the United States, was ordered to be printed as a part of the proceedings of the convention.

The next convention will be held in Portland, Me., on July 14, 1903.

REVIEW OF RAILWAY OPERATIONS AND REGULATION IN THE UNITED STATES.

In its last annual report the Commission stated that it had in preparation "A Ten-Year Book of Railways in the United States," and indicated the general contents of the book. The scope of the work has been somewhat enlarged, and several parts or divisions, which are now ready—namely, "Review of Changes in Freight Tariffs," "State Regulation of Railways," and "State Taxation of Railways and Other Transportation Agencies"—are made an appendix to this report.

All of which is respectfully submitted.

MARTIN A. KNAPP.
JUDSON C. CLEMENTS.
JAMES D. YEOMANS.
CHARLES A. PROUTY.
JOSEPH W. FIFER.
Commissioners.

APPENDIX A.

NAMES AND COMPENSATION OF ALL EMPLOYEES, TOGETHER WITH A STATEMENT OF APPROPRIATION AND EXPENDITURES.

1902.

APPROPRIATION, STATEMENT OF EXPENDITURES, AND PERSONS EMPLOYED BY THE COMMISSION.

STATEMENT OF APPROPRIATION AND AGGREGATE EXPENDITURES FOR THE INTERSTATE COMMERCE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1902.

Sundry civil act, March 3, 1901.—For salaries of Commissioners, as provided by the "act to regulate commerce"	$37,500.00	
For salary of secretary, as provided by the "act to regulate commerce"	3,500.00	
		$41,000.00
For all other necessary expenditures to enable the Commission to give effect to and execute the provisions of said "act to regulate commerce"		209,000.00
To enable the Interstate Commerce Commission to keep informed regarding compliance with the "act to promote the safety of employees and travelers upon railroads," approved March 2, 1893, and to enforce the requirements of the said act		25,000.00
		275,000.00
Amount paid as salaries to Commissioners and secretary	$41,000.00	
Amount expended for all other purposes	207,240.79	
Amount expended under "safety appliance appropriation"	23,488.14	
		271,728.93
Unexpended balance, June 30, 1902		3,271.07

DETAILED STATEMENT OF EXPENDITURES OF THE INTERSTATE COMMERCE COMMISSION FOR FISCAL YEAR ENDING JUNE 30, 1902.

Salaries of Commissioners and secretary		$41,000.00
Employees:		
One assistant secretary, 12 months, at $250 per month	$3,000.00	
One solicitor, 12 months, at $250 per month	3,000.00	
One statistician, 12 months, at $208.33⅓ per month	2,500.00	
One auditor, 12 months, at $208.33⅓ per month	2,500.00	
One special agent, 12 months, at $208.33⅓ per month	2,500.00	
One assistant statistician, 12 months, at $166.66⅔ per month	2,000.00	
One assistant auditor, 12 months, at $166.66⅔ per month	2,000.00	
One law clerk, 12 months, at $166.66⅔ per month	2,000.00	
One confidential clerk, 12 months, at $166.66⅔ per month	2,000.00	
One confidential clerk, 6 months, at $166.66⅔ per month, and 6 months, at $133.33⅓ per month	1,800.00	
One confidential clerk, 9½ months and 4 days, at $133.33⅓ per month	1,284.44	
One clerk, 12 months, at $141.66⅔ per month	1,700.00	
Two clerks, 12 months, at $133.33⅓ per month	3,200.00	

Employees—Continued.	
Two official stenographers, 12 months, at $125 per month	$3,000.00
Eleven clerks, 12 months, at $125 per month	16,500.00
One clerk, 7 months, at $125 per month	875.00
Four clerks, 12 months, at $116.66⅔ per month	5,600.00
Twenty-six clerks, 12 months, at $108.33⅓ per month	33,800.00
One clerk, 11½ months and 9½ days, at $108.33⅓ per month	1,279.03
One clerk, 9½ months and 4½ days, at $108.33⅓ per month	1,045.41
One clerk, 8½ months and 24 days, at $108.33⅓ per month	1,005.86
One clerk, 9 months, at $108.33⅓ per month	975.00
One clerk, 8 months and 24 days, at $108.33⅓ per month	951.81
One clerk, 12 months, at $105 per month	1,260.00
Nineteen clerks, 12 months, at $100 per month	22,800.00
One clerk, 10 months and 2 days, at $100 per month	1,006.45
One clerk, 9 months and 4 days, at $100 per month	913.33
One clerk, 6 months and 12½ days, at $100 per month	640.32
Twelve clerks, 12 months, at $91.66⅔ per month	13,200.00
One clerk, 11½ months and 5 days, at $91.66⅔ per month	1,069.44
One clerk, 11 months and 9 days, at $91.66⅔ per month	1,034.95
One clerk, 10½ months and 20½ days, at $91.66⅔ per month	1,024.43
One clerk, 9 months and 14½ days, at $91.66⅔ per month	869.30
One clerk, 4½ months, at $91.66⅔ per month	412.50
One clerk, 4 months, at $91.66⅔ per month	366.67
Four clerks, 12 months, at $83.33⅓ per month	4,000.00
One clerk, 10½ months and 12½ days, at $83.33⅓ per month	909.71
One clerk, 1½ months and 14½ days, at $83.33⅓ per month	163.98
Three clerks, 12 months, at $75 per month	2,700.00
One clerk, 2½ months, at $75 per month	187.50
One clerk, 1½ months and 7½ days, at $75 per month	130.64
One clerk, 12 months, at $70 per month	840.00
One laborer, 12 months, at $50 per month	600.00
One laborer, 12 months, at $45 per month	540.00
Two laborers, 12 months, at $40 per month	960.00
One laborer, 9 months, at $40 per month	360.00
Two laborers, 12 months, at $35 per month	840.00
One laborer, 8 months, at $35 per month	280.00
One laborer, 2½ months and 7 days, at $35 per month	95.66
Two laborers, 313 days, at $1.50 per day	939.00
One laborer, 207½ days, at $1.50 per day	311.25
One laborer, 130 days, at $1.50 per day	195.00
One laborer, 119 days, at $1.50 per day	178.50
Stenography and typewriting:	
16 days, at $5 per day	80.00
733 hours, at 30 cents per hour	219.90
245 pages, at 10 cents per page	24.50
2,343 folios, at 15 cents per folio	351.45
800 folios, at 12½ cents per folio	100.00

Stenography and typewriting—Continued.		
297 folios, at 10 cents per folio	$29.70	
1,663 folios, at 5 cents per folio	83.15	
345 folios, at 4½ cents per folio	15.52	
		$154,249.40
Traveling expenses of the Commission from Washington to Baltimore, Philadelphia, New York, Buffalo, Boston, Pittsburg, Chicago, Detroit, Cleveland, Sioux City, St. Louis, Omaha, Denver, Kansas City, Cincinnati, Louisville, Memphis, Chattanooga at divers times, and to Canandaigua, Peoria, Ann Arbor, St. Paul, Lansing, Indianapolis, Jefferson City, Springfield, San Francisco, New Brunswick, Charleston, Memphis, Nashville, Atlanta, Columbus, Jacksonville, Leadville, and Vicksburg:		
Railroad fares and accommodations while traveling, transportation of baggage, and omnibus fares	7,651.97	
Hotel bills and meals en route	2,826.69	
Stationery, extra clerks, and messenger service	160.15	
		10,638.81
Rent of offices, fifth, sixth, seventh, and eighth floors, three rooms on fourth, one room on third, two rooms on second, one room on first floors, and cellar. (This charge includes heating, watchman, elevator, and water service)		12,370.00
Desks, chairs, tables, bookcases, and filing cases		603.17
Printing reports, decisions, circulars, order blanks, and stationery		14,177.91
Railway and law books		1,135.13
Investigations and prosecutions of violations of law		5,400.00
Telegrams		495.57
Janitor, ice, carrying mail, stamps, expressage, and incidental expenses		8,170.80
Safety appliances:		
One inspector, 9 months, at $150 per month, and 3 months, at $125 per month	$1,725.00	
Five inspectors, 12 months, at $125 per month	7,500.00	
One inspector, 5 months and 26 days, at $125 per month	729.84	
One inspector, 5 months and 11 days, at $125 per month	669.35	
One inspector, 3 months and 27 days, at $125 per month	483.87	
One inspector, 3 months and 10 days, at $125 per month	415.32	
One clerk, 12 months, at $91.66⅔ per month	1,100.00	
Traveling expenses	9,729.82	
Incidental expenses	1,134.94	
		23,488.14
Total amount of expenditures from July 1, 1901, to June 30, 1902		271,728.93

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1902.

Name.	Office.	Whence appointed.	Time employed.	Per month.
Martin S. Decker	Assistant secretary	New York	1 year	$250.00
Lewellyn A. Shaver	Solicitor	Alabama	do	250.00
Henry C. Adams	Statistician	Michigan	do	208.33⅓
Jesse M. Smith	Auditor	Alabama	do	208.33⅓
John T. Marchand	Special agent	Pennsylvania	do	208.33⅓
Walter E. Burleigh	Assistant statistician	New Hampshire	do	166.66⅔
George T. Roberts	Assistant auditor	Vermont	do	166.66⅔
Henry Talbott	Law clerk	Illinois	do	166.66⅔
Samuel W. Briggs	C. Clerk	Iowa	do	166.66⅔
Patrick J. Farrell	do	Vermont	6 months	166.66⅔
Do	do	do	do	133.33⅓
William H. Connolly	Clerk	North Dakota	1 year	141.66⅔
Edward L. Pugh	do	Alabama	do	133.33⅓
Robert F. McMillan	do	Indiana	do	133.33⅓
William McCambridge	C. Clerk	Illinois	9½ months 4 days	133.33⅓
J. Howard Fishback	Official stenographer	District of Columbia	1 year	125.00
John J. McAuliffe	do	do	do	125.00
Daniel M. Wood	Clerk	New York	do	125.00
H. S. Milstead	do	Virginia	do	125.00
Robert G. Batten	do	Georgia	do	125.00
Jack F. Moss	do	Mississippi	do	125.00
Bloom D. Chapman	do	New York	do	125.00
Edward M. Graney	do	do	do	125.00
Livingston Vann	do	Florida	do	125.00
Raymond Loranz	do	Iowa	do	125.00
Thomas Jackson	do	New York	do	125.00
Harry C. Robinson	do	Vermont	do	125.00
John B. Lybrook	do	Virginia	do	125.00
William H. Denlinger	do	Illinois	7 months	125.00
Nathan C. Munroe	do	Georgia	1 year	116.66⅔
William A. King	do	New York	do	116.66⅔
J. Fletcher Johnson	do	Kentucky	do	116.66⅔
Duncan L. Richmond	do	District of Columbia	do	116.66⅔
Ervin C. Bowen	do	do	do	108.33⅓
Robert E. Lewis	do	do	do	108.33⅓
Edward B. Blizzard	do	West Virginia	do	108.33⅓
George M. Crosland	do	South Carolina	do	108.33⅓
James S. Fitzhugh	do	Texas	do	108.33⅓
John A. Shearer	do	Pennsylvania	do	108.33⅓
Silas C. Robb	do	Kansas	do	108.33⅓
John H. Tilton	do	New Jersey	do	108.33⅓
John F. Dwyer	do	Massachusetts	do	108.33⅓
Louis W. Perkins	do	Louisiana	do	108.33⅓
Henry E. Kondrup	do	District of Columbia	do	108.33⅓
Michael Hays Perry	do	New Jersey	do	108.33⅓
George O. Boal	do	Pennsylvania	do	108.33⅓
J. J. Lewis	do	Colorado	do	108.33⅓
Hart P. Grigsby	do	Kentucky	do	108.33⅓
John S. Walker	do	Iowa	do	108.33⅓
Joseph G. Blount	do	Georgia	do	108.33⅓
Archibald H. Davis	do	North Carolina	do	108.33⅓
R. Wirt Washington	do	Virginia	do	108.33⅓
Samuel D. Sterne	do	Iowa	do	108.33⅓
Gove S. Wilson	do	Delaware	do	108.33⅓
Eugene L. Gaddess	do	Virginia	do	108.33⅓

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1902—Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
James L. Murphy	Clerk	Louisiana	1 year	$108.33⅓
James C. Jemison	do	Delaware	do	108.33⅓
Charles Bingham	do	Pennsylvania	do	108.33⅓
William R. England	do	Virginia	do	108.33⅓
George I. Thomas	do	Georgia	11⅓ months 9⅓ days	108.33⅓
Zeb Vance Harris	do	North Carolina	9⅓ months 4⅓ days	108.33⅓
Charles H. Young	do	Missouri	8⅓ months 24 days	108.33⅓
Alfred C. Smith[a]	do	New York	9 months	108.33⅓
Willoughby S. Chesley	do	Maryland	8 months 24 days	108.33⅓
Frederick P. Russell	do	Massachusetts	1 year	105.00
John H. Clipper	do	Maryland	do	100.00
Charles F. Gerry	do	do	do	100.00
John H. Anderson	do	Indiana	do	100.00
John C. C. Patterson	do	Maryland	do	100.00
Harry A. Bigley	do	District of Columbia	do	100.00
John D. Nixon	do	Oklahoma	do	100.00
William F. Craig	do	Pennsylvania	do	100.00
George Q. Houlehan	do	Maine	do	100.00
Silas H. Smith	do	Kentucky	do	100.00
Montgomery Cumming	do	Georgia	do	100.00
Edward K. DePuy	do	South Dakota	do	100.00
Carlton R. Willett	do	Texas	do	100.00
Edward D. Anderson	do	Missouri	do	100.00
Fontaine L. Carswell	do	Georgia	do	100.00
Jesse D. Newton	do	Iowa	do	100.00
Henry A. Dwight	do	do	do	100.00
William C. Swain	do	District of Columbia	do	100.00
Charles S. Rockwood	do	Massachusetts	do	100.00
W. W. Scott	do	Virginia	do	100.00
William R. Mack	do	Michigan	10 months 2 days	100.00
William W. Chance	do	Illinois	9 months 4 days	100.00
Eugene K. Guilford	do	District of Columbia	6 months 12½ days	100.00
Richmond F. Bingham	do	New Hampshire	1 year	91.66⅔
Arthur F. Rudolph	do	South Dakota	do	91.66⅔
Alfred Holmead	do	District of Columbia	do	91.66⅔
James R. Pipes	do	West Virginia	do	91.66⅔
Matthew T. Pollock	do	Virginia	do	91.66⅔
Calvin A. Mathes	do	Tennessee	do	91.66⅔
John S. Copeland	do	Arkansas	do	91.66⅔
Bennet C. Taliaferro	do	Tennessee	do	91.66⅔
J. D. McCafferty	do	Pennsylvania	do	91.66⅔
John G. Reeves	do	District of Columbia	do	91.66⅔
A. M. Hartsfield	do	Georgia	do	91.66⅔
Andrew Denham	do	Florida	do	91.66⅔
William A. Cox	do	Tennessee	do	91.66⅔
William C. Borland	do	Idaho	11⅓ months 5 days	91.66⅔
Joseph Reardon	do	Maine	11 months 9 days	91.66⅔
Pearson F. Marsh	do	Ohio	10⅓ months 20⅓ days	91.66⅔
William S. Hardesty	do	Indiana	9 months 14⅓ days	91.66⅔
Philip A. Robinson[b]	do	New Hampshire	4⅓ months	91.66⅔
Dixson H. Bynum	do	Indiana	4 months	91.66⅔
C. W. Kendall	do	Colorado	1 year	83.33⅓
Harry A. Bruck	do	Maryland	do	83.33⅓
Frank C. Stratton	do	Kansas	do	83.33⅓

[a] Deceased.

[b] Transferred.

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1902—Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
T. Wingfield Bullock	Clerk	Kentucky	1 year	$83.33⅓
Laurence J. McGee	do	Maryland	10⅓ months 12⅓ days.	83.33⅓
Henry C. Brownlow	do	Tennessee	1⅓ months 14⅓ days.	83.33⅓
James H. Lewis	do	District of Columbia	1 year	75.00
Henry J. Conyngton	do	Ohio	do	75.00
Abram P. Worthington	do	Texas	do	75.00
Richard A. Clay	do	Alabama	2½ months	75.00
Edward N. Quinn	do	Utah	1½ months 7½ days	75.00
M. D. L. Harden	do	Kansas	1 year	70.00
Charles F. Ford	Laborer	New York	do	50.00
Charles F. Forsyth	do	Iowa	do	45.00
Henry Cissel	do	District of Columbia	do	40.00
Thomas H. Robinson	do	do	do	40.00
Eugene A. Burton[a]	do	Kentucky	9 months	40.00
James A. Dove	do	Maryland	1 year	35.00
Louis F. Clipper	do	do	do	35.00
Charles E. Hill	do	West Virginia	8 months	35.00
J. Chester Wilfong	do	Maryland	2½ months 7 days	35.00
John W. Eacritt	do	District of Columbia	313 days	[d]1.50
Samuel D. Baxter	do	do	do	[d]1.50
Harrison Barr	do	Virginia	207½ days	[d]1.50
Herman J. Stommel	do	Maryland	130 days	[d]1.50
James T. Pugsley[b]	do	District of Columbia	119 days	[d]1.50
George Groobey	Inspector	Illinois	9 months	150.00
George Groobey	do	do	3 months	125.00
J. W. Watson	do	New York	1 year	125.00
George V. Martin	do	Montana	do	125.00
Frank C. Smith	do	Michigan	do	125.00
Albert H. Hawley	do	New York	do	125.00
Richard R. Cullinane	do	Mississippi	do	125.00
W. R. Wright	do	Missouri	5 months 26 days	125.00
H. K. Swasey	do	Massachusetts	5 months 11 days	125.00
Jesse C. Sears	do	Texas	3 months 27 days	125.00
James E. Jones	do	Illinois	3 months 10 days	125.00

[a] Resigned. [b] Per day.

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION, DECEMBER 1, 1902.

Name.	Office.	Whence appointed.	Salary per month.
Henry C. Adams	Statistician	Michigan	$291.66⅔
Martin S. Decker	Assistant secretary	New York	250.00
Lewellyn A. Shaver	Solicitor	Alabama	250.00
Jesse M. Smith	Auditor	do	208.33⅓
John T. Marchand	Special agent	Pennsylvania	208.33⅓
Walter E. Burleigh	Assistant statistician	New Hampshire	166.66⅔
George T. Roberts	Assistant auditor	Vermont	166.66⅔
Henry Talbott	Law clerk	Illinois	166.66⅔
Samuel W. Briggs	Confidential clerk	Iowa	166.66⅔
Patrick J. Farrell	do	Vermont	166.66⅔
William McCambridge	do	Illinois	150.00

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION, DECEMBER 1, 1902—Continued.

Name.	Office.	Whence appointed.	Salary per month.
William H. Connolly	Clerk	North Dakota	$150.00
Edward L. Pugh	do	Alabama	133.33⅓
Harrie S. Milstead	do	Virginia	133.33⅓
Robert G. Batten	do	Georgia	133.33⅓
Robert F. McMillan	do	Indiana	133.33⅓
J. Howard Fishback	Official stenographer	District of Columbia	125.00
John J. McAuliffe	do	do	125.00
Daniel M. Wood	Clerk	New York	125.00
Nathan C. Monroe	do	Georgia	125.00
Jack F. Moss	do	Mississippi	125.00
John B. Lybrook	do	Virginia	125.00
Bloom D. Chapman	do	New York	125.00
Edward M. Graney	do	do	125.00
Livingston Vann	do	Florida	125.00
Raymond Loranz	do	Iowa	125.00
Thomas Jackson	do	New York	125.00
Harry C. Robinson	do	Vermont	125.00
William A. King	do	New York	116.66⅔
J. Fletcher Johnston	do	Kentucky	116.66⅔
Duncan L. Richmond	do	District of Columbia	116.66⅔
Ervin C. Bowen	do	do	108.33⅓
Robert E. Lewis	do	do	108.33⅓
Edward B. Blizzard	do	West Virginia	108.33⅓
George M. Crosland	do	South Carolina	108.33⅓
Frederick P. Russell	do	Massachusetts	108.33⅓
James S. Fitzhugh	do	Texas	108.33⅓
John A. Shearer	do	Pennsylvania	108.33⅓
Silas C. Robb	do	Kansas	108.33⅓
John H. Tilton	do	New Jersey	108.33⅓
John F. Dwyer	do	Massachusetts	108.33⅓
Louis W. Perkins	do	Louisiana	108.33⅓
Henry E. Kondrup	do	District of Columbia	108.33⅓
Michael Hays Perry	do	New Jersey	108.33⅓
George O. Boal	do	Pennsylvania	108.33⅓
J. J. Lewis	do	Colorado	108.33⅓
Hart P. Grigsby	do	Kentucky	108.33⅓
John S. Walker	do	Iowa	108.33⅓
Joseph G. Blount	do	Georgia	108.33⅓
Archibald H. Davis	do	North Carolina	108.33⅓
Charles H. Young	do	Missouri	108.33⅓
R. Wirt Washington	do	Virginia	108.33⅓
Samuel D. Sterne	do	Iowa	108.33⅓
Gove S. Wilson	do	Delaware	108.33⅓
Eugene L. Gaddess	do	Virginia	108.33⅓
James L. Murphy	do	Louisiana	108.33⅓
Zeb Vance Harris	do	North Carolina	108.33⅓
James C. Jamison	do	Delaware	108.33⅓
Charles Bingham	do	Pennsylvania	108.33⅓
William R. England	do	Virginia	108.33⅓
George I. Thomas	do	Georgia	108.33⅓
John H. Clipper	do	Maryland	108.33⅓
Charles F. Gerry	do	do	108.33⅓
Harry A. Bigley	do	District of Columbia	108.33⅓
Silas H. Smith	do	Kentucky	108.33⅓

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION, DECEMBER 1, 1902—Continued.

Name.	Office.	Whence appointed.	Salary per month.
Montgomery Cumming	Clerk	Georgia	$108.33⅓
Jesse D. Newton	do	Iowa	108.33⅓
Henry A. Dwight	do	do	108.33⅓
Willoughby S. Chesley	do	Maryland	108.33⅓
William R. Mack	do	Michigan	100.00
William H. Denlinger	do	Illinois	100.00
John H. Anderson	do	Indiana	100.00
John C. C. Patterson	do	Maryland	100.00
John D. Nixon	do	Oklahoma	100.00
Walter W. Scott	do	Virginia	100.00
William F. Craig	do	Pennsylvania	100.00
George Q. Houlehan	do	Maine	100.00
Edward K. De Puy	do	South Dakota	100.00
Carlton R. Willett	do	Texas	100.00
Edward D. Anderson	do	Missouri	100.00
Fontaine L. Carswell	do	Georgia	100.00
William C. Swain	do	District of Columbia	100.00
Charles S. Rockwood	do	Massachusetts	100.00
Richmond F. Bingham	do	New Hampshire	100.00
Eugene K. Guilford	do	District of Columbia	100.00
Alfred Holmead	do	do	100.00
Bennet C. Taliaferro	do	Tennessee	100.00
J. D. McCafferty	do	Pennsylvania	100.00
James R. Pipes	do	West Virginia	100.00
Arthur F. Rudolph	do	South Dakota	91.66⅔
Dixson H. Bynum	do	Indiana	91.66⅔
Matthew T. Pollock	do	Virginia	91.66⅔
Calvin A. Mathes	do	Tennessee	91.66⅔
John S. Copeland	do	Arkansas	91.66⅔
Pearson F. Marsh	do	Ohio	91.66⅔
William C. Borland	do	Idaho	91.66⅔
Andrew Denham	do	Florida	91.66⅔
Joseph Reardon	do	Maine	91.66⅔
John G. Reeves	do	District of Columbia	91.66⅔
William A. Cox	do	Tennessee	91.66⅔
A. M. Hartsfield	do	Georgia	91.66⅔
William S. Hardesty	do	Indiana	91.66⅔
T. Wingfield Bullock	do	Kentucky	83.33⅓
Laurence J. McGee	do	Maryland	83.33⅓
C. W. Kendall	do	Colorado	83.33⅓
Frank C. Stratton	do	Kansas	83.33⅓
Abram P. Worthington	do	Ohio	83.33⅓
Henry J. Conyngton	do	Texas	83.33⅓
Henry C. Brownlow	do	Tennessee	83.33⅓
John F. Hennessey	do	Connecticut	83.33⅓
Frank M. Young	do	Pennsylvania	83.33⅓
James H. Lewis	do	District of Columbia	75.00
Richard A. Clay	do	Alabama	75.00
Edward N. Quinn	do	Utah	75.00
M. D. L. Harden	do	Kansas	70.00
Charles F. Ford	Laborer	New York	50.00
Charles F. Forsyth	do	Iowa	45.00
Henry Cissel	do	District of Columbia	40.00
Thomas H. Robinson	do	do	40.00

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION, DECEMBER 1, 1902—Continued.

Name.	Office.	Whence appointed.	Salary per month.
James A. Dove	Laborer	Maryland	$35.00
Louis F. Clipper	do	do	35.00
Charles E. Hill	do	West Virginia	35.00
J. Chester Wilfong	do	Maryland	35.00
Samuel D. Baxter	do	District of Columbia	a1.50
John W. Eacritt	do	do	a1.50
Harrison Barr	do	Virginia	a1.50
Herman J. Stommel	do	Maryland	a1.50
George Grooby	Inspector	Illinois	150.00
J. W. Watson	do	New York	125.00
George V. Martin	do	Montana	125.00
Frank C. Smith	do	Michigan	125.00
Albert H. Hawley	do	New York	125.00
Richard R. Cullinane	do	Mississippi	125.00
W. R. Wright	do	Missouri	125.00
H. K. Swansey	do	Massachusetts	125.00
Jesse C. Sears	do	Texas	125.00
James E. Jones	do	Illinois	125.00
James J. Coutts	do	Ohio	125.00
C. F. Merrill	do	Wisconsin	125.00

a Per day.

APPENDIX B.

POINTS DECIDED BY THE COMMISSION SINCE ITS ORGANIZATION.

POINTS DECIDED BY THE COMMISSION SINCE ITS ORGANIZATION.

In re The Southern Pacific Railroad Company. (1 I. C. C. Rep., 6.)

1. The Commission will not make an order for relief under the fourth section of the act to regulate commerce except upon verified petition and after investigation into the facts.

In re The Petition of the Order of Railway Conductors.

In re The Petition of the Traders and Travelers' Union. (1 I. C. C. Rep., 8.)

2. The Commission will not express opinions on abstract questions, nor on questions presented by *ex parte* statements of fact, nor on questions of construction of the statute presented for its advice but without any controversy pending before it on complaint of violation of law.
3. Where the question on which advice is sought is whether carriers subject to the act may now grant any particular right or privilege which they were accustomed to grant before, the carriers should, in the first instance, determine it for themselves, and if it is then complained that what they do violates the act, the question can be brought before the Commission on complaint, and it will then have jurisdiction to decide it.

In re Indian Supplies. (1 I. C. C. Rep., 15.)

4. When under the statute the Government contracts for the delivery of the supplies needed for the Indian service, at New York and other points designated, and then advertises for bids for the transportation of the supplies from the points of delivery to the points where they are to be made use of, this transportation at the cost of the Government is "for the United States" within the meaning of section 22 of the act to regulate commerce, and is not required to be made at the regular published rates.

In re The Iowa Barbed Steel Wire Company. (1 I. C. C. Rep., 17.)

5. The Interstate Commerce Commission has not been given authority to authorize the grant by railroad companies of special privileges to individuals or corporations, or to sanction such as are not in harmony with the act to regulate commerce, or to suspend that act for the benefit of particular industries.
6. Whether railroad companies ought to grant a particular special privilege which would not be illegal, the Commission would not undertake to say on *ex parte* application.
7. A petition was presented by a manufacturing corporation, which recited in substance that railroad companies had been accustomed to permit it to procure its raw material at a distance, manufacture its goods therefrom, and then ship the goods to a market at the same aggregate rate for transportation of both raw material and manufactured goods as would be charged had there been no stoppage in transit and no manufacture; that this privilege of manufacturing in transit was valuable to the corporation and to the community in which its business was located, and wronged no one; and petitioner prayed that it might be sanctioned by the Commission. But no authority to that effect having been conferred upon the Commission, the petition was dismissed.

In re The St. Louis Millers' Association. (1 I. C. C. Rep., 20.)

8. The Commission reiterates that it has no authority to order or sanction the giving of special privileges.
9. "Milling in transit" having long been permitted by common carriers to millers at certain points, and a large quantity of "transits" being said to be out, which can be and are made use of to give millers at Minneapolis an advantage in rates over those at St. Louis, the Commission can not correct the wrong by giving or authorizing special rates to the St. Louis millers.

In re United States Commission of Fish and Fisheries. (1 I. C. C. Rep., 21.)

10. The United States Commission of Fish and Fisheries being one of the agencies of Government, and the distribution of fish and fish eggs by it being made by authority of the Government, the transportation of the fish and fish eggs so distributed falls within the exception contained in section 22 of the act to regulate commerce, and the rate is not governed by the published tariff.
11. The question of free transportation to employees and agents of the Commission and of the National Museum raised but not passed upon.

In re Export Trade of Boston. (1 I. C. C. Rep., 24.)

12. It seems not to be illegal for railroad companies connecting Boston with Western points to make the rates from such points to Boston upon grain and provisions for export as low as the rates to New York, although the rates upon like property for local consumption are higher to Boston than to New York, the distance being somewhat greater.
13. Reasons given why this may be a necessity of the situation.

In re Disabled Soldiers and Sailors. (1 I. C. C. Rep., 28.)

14. Whether since the passage of the act to regulate commerce it is competent for the carriers subject to it to grant free transportation of persons to those who are proper subjects of charity the Commission will not undertake to say, when no controversy is pending before it which raises the question.

In re Annapolis, Washington and Baltimore R. R. Co. *et al.* (1 I. C. C. Rep., 315.)

15. So far as a railroad company whose line is entirely within one State issues through bills of lading over its connecting lines to points in other States, and makes through rates, it falls under the provision of the interstate-commerce act.

The Missouri and Illinois Railroad Tie and Lumber Company *v.* The Cape Girardeau and Southwestern Railway Company. (1 I. C. C. Rep., 30.)

16. The fact that the owner of merchandise which is offered to a carrier for transportation from one point to another in the same State intends to have it further transported by a second carrier into another State does not make such first transportation interstate commerce, or render the carrier subject to the control of the Commission in respect to it, even though such first carrier may be informed of the ultimate destination of the merchandise.

In re Petition of the Louisville and Nashville Railroad Company. (1 I. C. C. Rep., 31.)

17. When a railroad company claims that the circumstances and conditions of long and short hauls on its lines are so dissimilar as to justify its making the greater charge on the shorter haul, the Commission will not on its petition decide upon the justice of its claim, but will leave it to take the initiative in fixing rates, and will decide upon their justice and propriety when complaint is made by persons or localities who consider themselves injured. On questions of statutory construction involved in such cases the Commission holds:
18. *First.* That the prohibition in the fourth section of the act to regulate commerce against a greater charge for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar.
19. *Second.* That the phrase "under substantially similar circumstances and conditions" in the fourth section is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance.
20. *Third.* That the judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts to decide whether error has been committed or whether the statute has been violated. And in case of complaint for violating the fourth section of the act the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar.
21. *Fourth.* That the provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4 as they do in other cases.
22. *Fifth.* That the existence of actual competition which is of controlling force, in respect to traffic important in amount, may make out the dissimilar circumstances and conditions entitling the carrier to charge less for the longer

than for the shorter haul over the same line in the same direction, the shorter being included in the longer in the following cases:

1. When the competition is with carriers by water which are not subject to the provisions of the statute.
2. When the competition is with foreign or other railroads which are not subject to the provisions of the statute.
3. In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition.

23. *Sixth.* The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic and that which is given the more favorable rates is not.

24. Nor is it sufficient justification for such greater charge that the short-haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long-haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.

Nor that the lesser charge on the longer haul has for its motive the encouragement of manufactures or some other branch of industry.

Nor that it is designed to build up business or trade centers.

Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up.

The fact that long-haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic.

The Chicago and Alton Railroad Company *v.* The Pennsylvania Railroad Company; The Same *v.* The Pennsylvania Company; The Chicago, Rock Island and Pacific Railroad Company *v.* The New York Central and Hudson River Railroad Company. (1 I. C. C. Rep., 86.)

25. The defendants adopted a regulation that they would not sell tickets for and over the line of a connecting road unless such connecting road would abstain from paying commissions to their agents on the sales made, and would make promise to that effect. Such a regulation is reasonable, and therefore legal.

26. A railroad company has a right to insist that its agents shall be its employees exclusively, and it is not obliged to permit any other company to make them its employees also.

27. The requirement in the act to regulate commerce that common carriers shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith," will not require a railroad company to sell through tickets over the line of a road whose managers persist in offering commissions to the agents who sell such tickets.

28. The practice of paying commissions to the agents of other roads on tickets sold over the road of the company paying the same, condemned as demoralizing, and as an improper drain on corporate resources.

29. If a passage ticket over several roads is a reasonable facility of travel, the privilege of paying a commission to the agent who sells it, and who would be required by duty to his employer to sell it when called for, without any commission therefor, can not be regarded as an incident to the facility, and therefore can not be insisted on.

Holbrook *et al. v.* St. Paul, Minneapolis and Manitoba Railroad Company. (1 I. C. C. Rep., 102.)

30. No order can be made against a railroad company on complaint which is not supported by evidence.

31. If a railroad company avows a purpose to comply with the law, it must be assumed that it will do so and is doing so until there is evidence that the purpose is not lived up to.

Fulton *v.* The Chicago, St. Paul, Minneapolis and Omaha Railroad Company; Harding *v.* the same company. (1 I. C. C. Rep., 104.)

32. Where complaint is made of rates as excessive the burden is upon complainant to make proof of the fact alleged, and if no proofs are put in by either party the complaint will be dismissed. This held in a case in which the rates were much higher than they had at one time been on the same line.

The Providence Coal Company *v.* The Providence and Worcester Railroad Company. (1 I. C. C. Rep., 107.)

33. An offer by a railroad company to give a discount to any consignee who within a year shall receive at any one station a specified amount of freight, which offer purports to be made to secure speedy dispatch, but it is not conditioned on speedy dispatch being made, is void, and if a discount is made to one dealer in pursuance of it, all others will be entitled to a like discount.
34. If the real consideration of the offer were to secure speedy dispatch, it should have been open to all who could accept it, regardless of quantity.
35. An offer of a special discount made professedly on one ground in the published tariff can not, when that ground fails, be supported by referring it to some other and different ground.
36. A railroad company can not support a discount based on quantity of freight received by any one shipper, on the principles which are applied among merchants, whereby they give better prices in wholesale than in retail dealings. The cases are not analogous, since the naming of the quantity of freight that shall be compared to wholesale purchases must necessarily be altogether arbitrary, and the duty of impartial service which the company owes to the public will preclude special discriminations being determined by arbitrary tests.
37. The Providence and Worcester Railroad Company has one terminus on the river in Providence, and another across the river in East Providence; the one in Providence having been first constructed, and the other later, and for the convenience of the company. From the Providence terminus to points reached from both the distance is slightly the less. The company is not at liberty to make from Providence to such common points higher charges than from East Providence, in order to force the business to the latter terminus, and would be chargeable with unjust discrimination if it should do so.
38. The fact that a railroad company for many years has paid the charge for hauling freight from wharves to its station does not bind it to continue that practice, and if not bound by contract it may stop doing so at any time.

The Traders and Travelers' Union *v.* The Philadelphia and Reading Railroad Company *et al.* (1 I. C. C. Rep., 122.)

39. The Commission has no jurisdiction to compel railroad companies to make arrangements whereby commercial travelers or others will be allowed as passengers to take an extra allowance of baggage without extra charge, in consideration of some guaranty against liability.
40. The fact that contracts to that effect are outstanding will not give the Commission authority to compel their observance, the power to do so not having been conferred upon the Commission by statute.

Burton Stock-Car Company *v.* Chicago, Burlington and Quincy Railroad Company *et al.* (1 I. C. C. Rep., 132.)

41. As the Burton Stock-Car Company does not use cars of railroad companies, or exchange cars in any manner, but rents them to the public for hire, the refusal of the defendants to pay the same mileage allowed on exchanges of cars between each other does not constitute unjust discrimination.

Ottinger *v.* The Southern Pacific Railroad Company. (1 I. C. C. Rep., 144.)

42. A complaint for unjust discrimination under the act to regulate commerce can not be made to embrace cases which occurred before the act was passed, even though they be similar to one which is complained of, and which arose afterwards.
43. The Commission has a certain discretion to receive and adjudge complaints made by parties who have no interest in the matter involved; but where "a railroad-ticket broker" complained that a party holding a ticket not transferable by its terms has been refused a permission of transfer which was given to another, and produced the affidavit of such party in proof of the fact, it was held that the party himself should complain, if anyone.
44. A *prima facie* case of unjust discrimination is not shown by the mere exhibition of two tickets for passage, one of which the railroad company has permitted to be transferred and the other not, when the two do not appear to be similar.

Larrison *v.* The Chicago and Grand Trunk Railway Company; The Michigan Central Railroad Company *v.* The Same. (1 I. C. C. Rep., 147.)

45. Mileage tickets authorized by section 22 of the act to regulate commerce.
46. Authorization of mileage tickets does not relieve carriers from requirements of reasonableness and impartiality as to rates charged, which are prescribed by other sections of the act.

47. Special contract limiting liability of carrier in mileage tickets to commercial travelers will not justify a lower rate than is charged the public, when same terms are not offered to all who will not accept such special contracts.
48. Must be sold impartially.

Thatcher *v.* The Delaware and Hudson Canal Company and others. (1 I. C. C. Rep., 152.)

49. The fact that railroad companies accept on through shipments from Chicago to Boston a certain sum as their share for the transportation of the freight from Schenectady to Boston is no ground for compelling them to accept a like sum on local shipments from Schenectady to Boston when it appears that this would be a reduction below the rates made from intermediate stations to Boston, on the same line, and apparently under similar circumstances and conditions.
50. Any order compelling such acceptance would bring the rates charged into conflict with the fourth section of the act to regulate commerce, unless the roads should reduce the rates from the intermediate stations to the level of the rates made from Schenectady. But in the absence of either allegation or proof that the rates from such intermediate stations are excessive, the Commission could not require a reduction.

The Associated Wholesale Grocers of St. Louis *v.* The Missouri Pacific Railway Company. (1 I. C. C. Rep., 156.)

51. Mileage, excursion, and commutation passenger tickets are each issued for a different purpose, and the price for each kind is determined on special considerations. The charge made for one kind, therefore, does not determine what it will be admissible to charge for either of the others.
52. That $25 for a thousand-mile ticket is too much can not be inferred from the fact that excursion and commutation tickets are sold at rates which would make transportation upon them for a thousand miles less than $25.
53. Mileage tickets when issued must be sold impartially to all who apply for them and on the same terms.

The Boston and Albany Railroad Company *v.* The Boston and Lowell Railroad Company *et al.*: The Vermont State Grange *v.* The Boston and Lowell Railroad Company *et al.* (1 I. C. C. Rep., 158.)

54. All companies forming a line for long-haul traffic are properly made defendants in petition charging violation of fourth section.
55. By the words "same line" a physical line is meant, not a mere business arrangement; and one piece of road may be part of several lines.
56. The fact that the tariff for the long-haul traffic is made by a fast-freight line does not justify a violation of the section.
57. The real and actual, not the possible, competiton are the circumstances which should be considered when such greater charges are in question.
58. Under the circumstances stated, the fact that a line is long and circuitous, and is obliged to make concessions in its charges in order to share in traffic, will not make out the dissimilar circumstances and conditions indicated by the fourth section.
59. One may complain on public grounds, though having no personal interest.

Jackson *v.* The St. Louis, Arkansas and Texas Railway Company. (1 I. C. C. Rep., 184.)

60. Petitioner complained of a certain rate as excessive. He also complained of unjust discrimination in respect to that rate. Defendant answered that its rate was not what petitioner supposed, but was a certain charge very much less, and also denied the alleged unjust discrimination. Petitioner did not further appear in the case, and did not respond at the hearing. *Held*, That it must be assumed on these facts that he was satisfied with the answer.

Leonard *v.* The Union Pacific Railway Company. (1 I. C. C. Rep., 185.)

61. When issues of fact are made by the pleadings and no proofs are offered, no relief can be granted on such issues.
62. The complaint charged unjust discrimination in rates. The answer admitted the discrimination, denied that it was unjust, and assigned reasons for making it. On the case being brought to a hearing on the pleadings and submitted without evidence, it was *held* that, since it was impossible to say that there might not be facts to support the discrimination, the case must be dismissed, but without prejudice.

Keith *et al v.* The Kentucky Central Railroad Company *et al.* (1 I. C. C. Rep., 189.)

63. A common carrier of live stock is subject to the legal duty to provide reasonable and proper facilities for receiving and discharging from its cars such live stock as is offered for transportation, free of all except the customary

transportation charges. It does not fully discharge this duty by receiving on and discharging from its cars live stock at a depot access to which must be purchased.

64. A railroad company as carrier of live stock had undertaken to give to a stock-yards company an exclusive right at one of its stations, and to require all stock at that station to be received and delivered on the platform of the chutes of that company; the company being authorized to charge lottage therefor. Complainants established by the track of the railroad company chutes of their own, through which they demanded the right of receiving and delivering the stock of themselves and their customers. The conveniences furnished by them being suitable, it was held that their demand must be complied with.

65. Where suit is pending involving to some extent the question presented by petition to the Commission, the pendency thereof will not be deemed sufficient reason for the Commission declining to make an order, when it is seen that the judgment of the court when rendered will not necessarily cover the ground of the petition; but leave will be given either party to apply for a modification of the order should a modification be necessary to make it conform to the judgment when rendered.

Allen *et al. v.* The Louisville, New Albany and Chicago Railroad Company. (1 I. C. C. Rep., 199.)

66. Rates named by a carrier do not violate the fourth section when it appears that on its own line the charges are greater for the longer distance and the through charges by the shorter line are only made greater by the fact that the connecting road which has the shorter line makes higher rates than the connecting road which has the longer line.

67. Cases stated showing no violation of the long and short haul clause.

68. Where the purpose of a complaint is to compel a reduction of through rates from a Western point over several roads to a seaboard city, all the roads constituting the line should be parties.

Smith *v.* Northern Pacific Railroad Company. (1 I. C. C. Rep., 208.)

69. The sale of "land explorers' tickets" and "settlers' tickets" at less than the regular rates charged to passengers at the usual ticket offices, as practiced by the Northern Pacific Railroad Company, is unjust discrimination.

70. Discrimination in rates charged passengers who enjoy the same accommodations is not justified by proof that the carrier's present or future business will be thereby stimulated, or that the settlement of the country will be promoted, or that those receiving the more favorable rates are persons of small means, who are about to locate permanently in the Northwest.

71. The rule under which passenger transportation should be conducted requires absolute equality of payment from all persons enjoying the same accommodations.

72. When one makes complaint under the act to regulate commerce, and sets up a personal grievance which he fails to prove, the Commission may nevertheless, if a violation of law by the defendant appears, retain the case and take the necessary steps to bring such violations of law to an end.

The Boards of Trade Union of Farmington, Northfield, Faribault, and Owatonna *v.* The Chicago, Milwaukee and St. Paul Railway Company. (1 I. C. C. Rep., 215.)

73. Rates must not only be reasonable in themselves, but they should be so relatively reasonable as to protect communities and business against unjust discrimination.

74. When the same carrier operates parallel lines, and for any cause accepts low rates on one of them, it should provide sufficient corresponding advantages to the patrons of the other line to preserve the substantial equality contemplated by the statute.

75. Low charges upon one of two routes operated by the same carrier should not be made up by relatively high charges upon the other, when the result disastrously affects the business of communities situated upon the latter line.

In re Procedure in Cases at Issue. (1 I. C. C. Rep., 223.)

76. Proceeding to be in the simplest form consistent with reasonable certainty. No replication required. When facts are not agreed upon, depositions may be taken on notice, and the work should be entered upon immediately after answer. Assignments for hearing made on request of either party. Parties will be heard orally or upon briefs, as they prefer.

In re Procedure concerning Questions of Law. (1 I. C. C. Rep., 225.)

77. Dilatory proceedings considered objectionable, and a single speedy hearing desired in every case; all proper questions will then be entertained, whether jurisdictional or relating to the merits of the controversy.

In re Joint Tariffs and Schedules. (1 I. C. C. Rep., 225.)

78. Schedules of joint tariffs required to be filed with the Commission by section 6 of the act need not be duplicated by each company which unites in making them. On receipt of a written statement from each corporation acknowledging the authority of the association, committee, or other traffic combination to issue tariffs in its behalf, schedules filed by such association, etc., will be credited to each road in the organization which so requests.

The Manufacturers and Jobbers' Union of Mankato *v.* The Minneapolis and St. Louis Railway Company and others. (1 I. C. C. Rep., 227.)

79. When, after trial, but before decision, the defendant concedes the relief sought, and reduces its tariff to the rates claimed by the petitioner, no order is made or opinion announced by the Commission; a report of the facts is made to complete the record of the case.

Raymond *v.* Chicago, Milwaukee and St. Paul Railway Company. (1 I. C. C. Rep., 230.)

80. Rates will not be declared unreasonable and unlawful under the first section of the act without other testimony than that afforded by comparison.

81. Rates and charges not unreasonably high of themselves can be so adjusted in their relations to each other as to give the undue preference and produce the unreasonable advantage which the third section of the act to regulate commerce makes unlawful.

82. If a railway company in establishing charges on different divisions and branches of its road so adjusts them as to divert trade and business to one locality which naturally, under an equitable adjustment of charges, would go to another, such preference is not excused by the fact that some of such charges are not entirely voluntary, but result from competition between carriers.

Evans *v.* The Oregon Railway and Navigation Company; Reed *v.* The Same Defendant. (1 I. C. C. Rep., 325.)

83. In determining what is a just and reasonable rate for a particular commodity (for example, wheat) the Commission will take into consideration the earnings and expenses of operating, rates charged upon the same commodity upon other roads as nearly similarly situated as may be, the diversities between the railroad in question and such other roads, the relative amount of through and local business, the proportion borne by the commodity in question to the remainder of the local traffic, the market value of the commodity and its gradual reduction, the reductions made by the carrier upon other articles which are consumed and necessarily required by the producers of the article in question, and all other circumstances affecting the traffic of itself and as related to other considerations entering into the charges of the carrier.

84. Upon the facts shown by the evidence in the present case: *Held*, That the rate on wheat from Walla Walla City to Portland should not exceed 23½ cents per hundred pounds when transported by the defendant railroad for the remainder of the present grain season, extending to the 30th of June, 1888.

W. O. Harwell, H. B. Montgomery, and J. W. Ponder, committee on transportation of the Board of Trade of Opelika, Ala., *v.* The Columbus and Western Railroad Company and the Western Railway of Alabama. (1 I. C. C. Rep., 236.)

85. The mere fact that a point is situated upon a navigable stream held not sufficient of itself to justify the lesser charge for a longer haul to such a point.

86. Competition by water, to be sufficient to justify an exception under section 4 of the act, should be actual, of controlling force, and in respect to traffic important in amount.

87. Discrimination under section 2, and prejudice and advantage under section 3, when water competition is brought forward as a justification, require the same measure of proof.

88. Parties affected are entitled to be notified in case a change in rates is asked. No order correcting the unjust discrimination now made, for want of proper parties and distinct allegations. Amendments allowed and revision of tariffs recommended to defendants.

89. Through rates and through bills of lading given on other commodities, and to other points similarly situated, should be given to Opelika on cotton, no excuse being shown for refusing same.

William H. Councill *v.* The Western and Atlantic Railroad Company. (1 I. C. C. Rep., 339.)

90. The Commission will not go into the question of money damages when the claim presented is in its nature an action of trespass, for the reason that defendant is constitutionally entitled to a trial by jury in such a case.

91. The Commission is not authorized to award the counsel and attorney's fees, which may be given by a court under the eighth section of the act.
92. Colored people may properly be assigned separate cars on equal terms. Such a separation of the races does not create undue prejudice or unjust preference.
93. Complainant, a colored man, paid the same fare as other first-class passengers, and it was only fair dealing and common honesty that he should have the security and convenience of travel for which his money had been taken.
94. Colored people who buy first-class tickets must be furnished with accommodations equally safe and comfortable with other first-class passengers. The Commission finds that the car furnished complainant was only second-class in comforts for travel, and that he was thereby subjected to undue prejudice and unreasonable disadvantage, in violation of the act to regulate commerce.

Thomas J. Reynolds *v.* The Western New York and Pennsylvania Railway Company. (1 I. C. C. Rep., 347.)

95. A road being in the hands of a receiver, a complaint was instituted against the company owning it, and in the complaint the receivership was mentioned, but the company was stated as having come into possession of the road, and the receiver was erroneously called the president of the company. The petition was served on him, and an answer was filed by the company. Under the circumstances it was held proper to allow the petitioner to amend his complaint so as to show the existence of the receivership.

In the matter of the Express Companies. (1 I. C. C. Rep., 349.)

96. The mere fact that a common carrier does other business besides the transportation of passengers or property, or performs a further service than that of transportation in respect to the articles carried, *held*, not sufficient to exclude the carrier from the operation of the act, so far as applicable to its business.
97. The act to regulate commerce is highly remedial in purpose and scope, and should receive a liberal construction, with the object of making the beneficial result desired by Congress operative to the greatest available extent.
98. The relation of express companies to interstate commerce considered, with the extent and method of their participation therein. The bringing them within the provisions of the act found practicable, and on some accounts desirable.
99. Express business, conducted as a branch of the business of the railroad company, *held* to be subject to the act.
100. Express business, conducted by an independent organization, acquiring transportation rights by contract, *held* not to be described in the act with sufficient precision to warrant the Commission in taking jurisdiction thereof.

Riddle, Dean & Co. *v.* The Baltimore and Ohio Railroad Company. (1 I. C. C. Rep., 372.)

101. In deciding upon applications for the amendment of complaints the Commission acts upon the principles recognized in courts of justice.
102. An amendment which proposes to substitute for the original cause of complaint something quite distinct and different will not be allowed. If the party desires to make a new case, he should do so by a new complaint.

Riddle, Dean & Co. *v.* The Pittsburgh and Lake Erie Railroad Company. (1 I. C. C. Rep., 374.)

103. Where, according to its usual experience, a railroad company has sufficient equipment to meet the demands upon it, and to move without unreasonable delay the freights offered, but by reason of unusual circumstances for which the company is not in fault freights have accumulated to an exceptional extent, and are then offered in extraordinary quantities, the company is not chargeable with any violation of law because of its proving unable to respond at once to all calls, and to furnish cars as rapidly as shippers demand them.
104. Nor does it violate any law by refusing to allow its cars to be sent off its line to distant points when the business offered on its own line keeps them fully occupied.
105. Where, by reason of extraordinary circumstances, a railroad company can not promptly meet all calls for cars, it should furnish them ratably and fairly to all shippers in proportion to the freights offered by them, respectively, until the emergency has passed and it is again enabled to move promptly all the freights tendered.
106. Upon the facts in this case the charge of unjust discrimination as between shippers and also between different classes of traffic is held not made out.

Thomas J. Reynolds *v.* Western New York and Pennsylvania Railway Company, and G. Clinton Gardner, receiver of the Buffalo, New York and Philadelphia Railroad Company. (1 I. C. C. Rep., 393.)

107. Classification of railroad ties should correspond with that of other rough lumber. Raising of same from sixth to fifth class unjustifiable.
108. Rates established by a common carrier in order to keep upon its line material for which the road has use, or to keep the price low for its own advantage, can not be justified.
109. Producer of railroad material is entitled to sell it when he wishes in the best available market. Common carriers are forbidden to attempt to prevent this by applying disproportionate or unreasonable rates.
110. Special classification of lumber should be extended to railroad ties at the points in question.

B. S. Crews *et al.*, committee, etc., *v.* The Richmond and Danville Railroad Company. (1 I. C. C. Rep., 401.)

111. It is not a ground of complaint against a railroad company that it equalizes its rates as between small and large towns, even though the effect may be prejudicial to the large towns which before had been specially favored.
112. The spirit and purpose of the act to regulate commerce requires that when the circumstances and conditions will fairly admit of it, the charges to all points for a like service should be made relatively equal.
113. When the reasonableness of rates is in question, the charges made on long through lines can not, for reasons which are stated in the opinion, form a just basis for comparison with local rates for relatively short distances.
114. A carrier is not made responsible for rates made by a connecting road because merely of its giving them in connection with its own rates to parties desiring to make through shipments.
115. A carrier is not compellable by law to give to the merchants of a town on its line the privilege of shipping their goods from the point of purchase to their own locality, and again from thence to the place to which the goods may be sold by them, at the same rate which would have been charged had there been but one shipment from the point of purchase to the point of ultimate delivery.
116. The fact that a refusal to give the through rate as for one shipment operates prejudicially to the town desiring the privilege and favorably to another town does not make the refusal operate as unjust discrimination when the carrier applies the same rule to all towns and accords the privilege to none.
117. Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it can not be predicated of action which in itself is impartial.

William H. Heard *v.* The Georgia Railroad Company. (1 I. C. C. Rep., 428.)

118. Passengers paying the same fare upon the same railroad train, whether white or colored, are entitled to equality of transportation in respect to the character of the cars in which they travel and the comforts and conveniences supplied.
119. Separation of white and colored passengers paying the same fare is not unlawful, if cars and accommodations equal in all respects are furnished to both and the same care and protection of passengers observed.
120. By requiring the petitioner, who had paid a first-class fare, to ride in a half car set apart for colored passengers, with accommodations and comforts inferior to the car for white passengers in the same train who paid the same fare, and without the protection against annoyances furnished to white passengers, the Georgia Railroad Company subjected him to undue and unreasonable prejudice and disadvantage, in violation of the third section of the act to regulate commerce.

The Boston Chamber of Commerce *v.* The Lake Shore and Michigan Southern Railway Company, the New York Central and Hudson River Railroad Company, and the Boston and Albany Railroad Company. (1 I. C. C. Rep., 436.)

The same *v.* The Lake Shore and Michigan Southern Railway Company.

The same *v.* The New York Central and Hudson River Railroad Company.

121. The relative reasonableness of rates on shipments from western points to cities on the Atlantic seaboard is to be determined by all the circumstances and conditions that affect the traffic to the respective points between which the rates are questioned, and not solely by one standard of comparison.
122. The length and character of the haul; the cost of the service; the volume of business; the condition of competition; the storage capacity, and the geo-

graphical situation at the different terminal points, are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation.

123. The fact that the export rates through Boston, and the rates on merchandise intended for coastwise points east of Portland, and the west-bound rates from Boston, have been made by the carriers the same as corresponding New York rates, in order to put Boston on an equality with New York and other seaboard cities wherever Boston is a competitor with those cities, is not controlling in determining the reasonablness of east-bound Boston local rates on a traffic in which there is no competition by other cities.

124. In view of the longer haul to Boston than to New York; the greater cost of transportation to Boston; the very much greater volume of business to and from New York; the competition by water transportation by the lakes, Erie Canal, and Hudson River, and also by several railroad lines; and the geographical and commercial advantages of New York; the differentials on Boston local rates of 10 cents per 100 pounds on the first and second classes of merchandise, and of 5 cents per 100 pounds on the four other classes, between New York and Boston, on traffic originating west of Buffalo, have not been shown to be unjust or unreasonable, or to constitute unjust discrimination against Boston.

James Pyles & Sons *v.* The East Tennessee, Virginia and Georgia Railway Company. (1 I. C. C. Rep., 465.)

125. By the classification of the Southern Railway and Steamship Association adopted by the East Tennessee, Virginia and Georgia Railway Company on shipments of pearline and common soap from New York to Atlanta, Ga., pearline is in fourth-class freight with a rate of 73 cents per 100 pounds, while common soap is in sixth-class freight with a class rate of 49 cents per 100 pounds, but a "special rate" is given common soap of 33 cents per 100 pounds.

Held, That pearline being competitive with common soap, the relative difference between the class rate of pearline and this "special rate" on common soap is too great, and that pearline must be placed in fifth-class freight on shipments from New York to Atlanta by the defendant company, with a rate of 60 cents per 100 pounds, and also in the fifth class in the classification of the Southern Railway and Steamship Association, and, further, that the relative difference in the rates on pearline and common soap in such shipments must not exceed the difference of 60 cents per 100 pounds of pearline and 33 cents on soap.

Held further, That on shipments of pearline and common soap, all rail, in the territory to which the classifications of the Southern Railway and Steamship Association applies, the following rates of this association must be maintained by the defendant company, namely:

	Cents.
Soap powder:	
100 miles ..... per 100 pounds..	32
500 miles ..... do....	49
Common soap:	
100 miles ..... do....	20
500 miles ..... do....	38

Held, That the discrimination made by the "special rate" of the Southern Railway and Steamship Association between pearline and common soap, to the extent now existing on the shipments to which it refers, is unjust and must be discontinued, and while common soap is in its sixth class pearline must be placed in its fifth class.

126. A statement of the grounds of differences in the classification of articles of freight by railroad companies and a discussion of these, by which the conclusions of the Commission are reached, in the classification of pearline when transported all rail on the one hand, or on the other, partly by water and partly by rail, as compared with the transportation of common soap by either mode.

W. B. Farrar & Co. *v.* The East Tennessee, Virginia and Georgia Railway Company and the Norfolk and Western Railroad Company. (1 I. C. C. Rep., 480.)

127. The local rates from Dalton to Knoxville, Johnson City, and Bristol on lumber are not shown to be unreasonable.

128. The joint rates on lumber from Dalton to Roanoke and Lynchburg are shown to be unreasonable, upon the grounds and for the reasons set forth in the report and opinion of the Commission.

129. As a rule, in the transportation of freight by railroads, while the aggregate charge is continually increasing the further the freight is carried, the rate

per ton per mile is constantly growing less all the time, making the aggregate charge less in proportion every hundred miles after the first, arising out of the character and nature of the service performed, and the cost of the service; and thus staple commodities and merchandise are enabled to bear the charges of this mode of transportation from and to the most distant portions of the country.

130. The act to regulate commerce, so far from throwing hampering restrictions or obstacles in the way of the operation of this salutary rule, gives it all the benefit and aid of its sanction and safeguards by providing that the carrier shall be entitled to receive a reasonable compensation for the service performed upon open published rates, against which no competitor can take advantage by allowing shippers secret rebates and drawbacks in order to get the business.

131. In the nature of things joint rates on long hauls usually are, and as a rule should be, lower in proportion to distance than local rates on short hauls of the same commodity.

Riddle, Dean & Co. *v.* The Pittsburg and Lake Erie Railroad Company. (1 I. C. C. Rep., 490.)

132. Rule stated in reference to applications for rehearings.

133. The Commission will promptly and carefully examine an application for a rehearing with a view to the immediate correction of any error of law or fact found to exist, but will not direct a rehearing involving the expense to parties of appearing before the Commission for a reargument unless satisfied that such a reargument might have the effect of changing the result of what the Commission has already done.

134. The statute is construed as dealing with the substance of things, and as contemplating, as far as this is possible, methods of procedure that are speedy and which come at once to the very right of questions arising in the transportation of persons and freight.

135. Where the relation of any carrier to the matter complained of is such that it is in whole or in part materially responsible for the alleged grievance, and has direct interest in any investigation of the subject-matter involved, and the merits of the controversy can not be investigated and determined in the absence of such carrier as a party, then that carrier should be made a party to the proceeding, and if not a party, no relief can be had against it.

136. The report and findings of the Commission upon the evidence relates only to the ascertainment and presentation of all the material facts necessary to fairly and justly present the merits of the controversy, and the Commission does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Commission are made.

John D. Heck and L. J. A. Petree *v.* The East Tennessee, Virginia and Georgia Railway Company, the Knoxville and Ohio Railroad Company, the Richmond and Danville Railroad Company, the Richmond and West Point Terminal and Warehouse Company, the Coal Creek and New River Railroad Company. (1 I. C. C. Rep., 495.)

137. A railroad company, chartered by the State of Tennessee, owns a short road wholly in that State, but has never owned any rolling stock nor operated its road. The road was used and operated as a means of conducting interstate traffic in coal by companies owning connecting interstate roads. *Held*, That the short road thus used is one of the facilities and instrumentalities of interstate commerce, and the carriers using it are subject to the provisions of the act to regulate commerce.

138. In respect to such traffic the duties of such carriers to the public are the same without respect to ownership, corporate control, the authority or means of its construction.

139. As one of the "instrumentalities of shipment or carriage," it must be accessible to all interstate shippers on equal and reasonable terms. The public can not be deprived of this right by the separate or joint action of the carriers, and they can not be permitted to use it for purposes of discrimination between mine owners on its line.

140. The claim for pecuniary damages presents a case at common law, in which defendants are entitled to a jury trial.

George Rice *v.* The Louisville and Nashville Railroad Company. (1 I. C. C. Rep., 503.)

The Same Complainant *v.* The Saint Louis, Iron Mountain and Southern Railway Company.

The Same Complainant *v.* The Mobile and Ohio Railroad Company.

The Same Complainant *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company.

The Same Complainant *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company and the Alabama Great Southern Railroad Company.

The Same Complainant *v.* The Mississippi and Tennessee Railroad Company.

The Same Complainant *v.* The Newport News and Mississippi Valley Company and the Louisville, New Orleans and Texas Railroad Company.

The Same Complainant *v.* The Newport News and Mississippi Valley Company and the Illinois Central Railroad Company.

The Same Complainant *v.* The Illinois Central Railroad Company.

141. When for a special traffic, *e. g.*, the transportation of petroleum oils, a carrier provides rolling stock for one method, but does not provide it for another for which it publishes rates, but the shippers are expected to provide the same, the terms on which such rolling stock is to be provided should be uniform and be published with the rate sheets, and can not lawfully be left to be the subject of bargain and of different terms in the case of different shippers.

142. It is properly the business of a carrier by railroad to supply the rolling stock for the freight he offers or proposes to carry; and if the diversities and peculiarities of traffic are such that this is not always practicable, and consignors are allowed to supply it for themselves, the carrier must not allow its own deficiencies in this particular to be made the means of putting at unreasonable disadvantage those who make use in the same traffic of the facilities it supplies.

143. When two methods for the transportation of an article of merchandise are nominally offered by the carrier, for only one of which it offers rolling stock, and for the other of which the shipper must supply his own rolling stock at considerable expense, it can not be said that the resort to the latter by the shipper is so far a matter of choice that he has no concern with the charges for transportation in the other mode. The man of small means being compelled to make this choice by reason of the carrier's failure to supply rolling stock for the other mode, has a right to insist that the charges by transportation in the two modes shall be relatively just and equal.

144. When oil is transported in tanks permanently affixed to car bodies, the tank is to be considered as part of the car; and for oil transported therein the charge for transportation should be the same by the hundred pounds that the carrier charges for transportation between the same points of barrels filled with like oil and taken in carload lots. The carrier is guilty of unjust discrimination if the shipper in barrels is charged a higher rate.

145. Neither the fact that the shipper in the one case supplies the rolling stock, nor the alleged fact, which is not found sustained, that for the tanks there is a greater probability of return loads, nor the further alleged fact that with barrel shipments there are greater risks to the carrier's property and that which it carries, can justify imposing upon the barrel shipments the greater burden.

146. Under this rule the carrier will be at liberty and will be expected to make to the owner of tank cars a reasonable allowance for their use.

147. When an important question is raised by the pleadings in a case, the determination of which will affect others quite as much as the parties before the Commission, but the parties give their attention almost exclusively to other questions, and neither by the evidence nor in argument supply the Commission with the information to enable it to be understandingly determined, the Commission will decline to decide it, and leave the parties to bring it forward again as they may be advised.

Riddle, Dean & Co. *v.* The New York, Lake Erie and Western Railroad Company and the Pittsburg and Lake Erie Railroad Company. (1 I. C. C. Rep., 594.)

148. Contracts between railroad companies for the advantageous transaction of business at a given point involve corresponding obligations to the public.

149. Regular patrons are not entitled to preference in the use of equipment of common carriers; the public must be justly and equally served.

150. Obligation of common carriers to transport freight arises upon tender of same for transportation in the usual way, without any special agreement; compensation for the service is secured by a lien upon the goods, except when payment in advance is made.

151. Selection of either goods or customers is forbidden to common carriers; less desirable traffic which is ordinarily the subject of transportation and not dangerous to handle, must be accepted upon reasonable terms, as well as that which is more desirable.

152. It is not a valid excuse for refusal to furnish a fair allotment of a certain class of cars that they can be more profitably employed, and can supply the wants of a larger number of shippers upon another portion of the line.
153. Undue preference found to have been given by defendants, to the prejudice of complainants, upon the facts stated.

Riddle, Dean & Co. *v.* The Baltimore and Ohio Railroad Company. (1 I. C. C. Rep., 608.)

154. A statement of the evidence from which it appears that it was the duty of the Yough Slope mine, its owners and agents, to have inquired of the station agent of the railroad company near by the mine on the 30th day of August, 1887, and on the next day, by which they would have learned that the mine could have obtained cars for the shipment of coal to Arthur & Boylan at Cleveland, Ohio, and they having failed to do this, in consequence of which the Youghiogheny and Ashtabula mines received nearly all these cars for this purpose, without any partiality or preference on the part of the railroad company.

Held, upon these facts, that a complaint of unjust discrimination against the Yough Slope mine, and in favor of the Youghiogheny and Ashtabula mines, can not be sustained.

155. Where a complaint is made by a shipper that an unjust discrimination was perpetrated by a railroad company against him at a particular time named, in a case like the present, to rebut the inference arising from circumstances calling for explanation, amongst other evidence the carrier may show that during a long course of business neither it nor any of its agents have ever shown any unfriendly spirit whatever toward the shipper, and that, on the contrary, its agents immediately before the matter complained of made extra exertions in good faith to serve the shipper in obtaining cars for him from the connecting line to which the shipper had to look for such cars.
156. In the absence of some custom and rule of business placing such duty upon the carrier to notify the shipper without inquiry on the part of the latter of the fact that he can then obtain cars for the movement of his freight, it is the duty of the shipper, by reasonable inquiry made to the proper agent of the railroad company, to obtain this information for himself; but in a case like the present, if the carrier took upon itself the duty of actually notifying the Youghiogheny and Ashtabula mines on the 30th of August, 1887, without waiting for any inquiry on their part, that they could get cars, then in like manner it was its duty to have notified the Yough Slope mine at the same time that it could get cars.

Held, That, tested by these rules, no case of preference or unjust discrimination is made out by the evidence in favor of the Youghiogheny and Ashtabula mines and against the Yough Slope mine.

In the matter of the Tariffs of the Columbus and Western Railway. (1 I. C. C. Rep., 626.)

157. Tariffs not conforming to fourth section criticised. Circumstances stated found not sufficient to warrant deviation from the law.
158. Carriers should bring their tariffs into conformity with the statute without suggestions from the Commission as to details.

The La Crosse Manufacturers and Jobbers' Union *v.* The Chicago, Milwaukee and Saint Paul Railway Company, the Chicago and Northwestern Railway Company, and the Chicago, Burlington and Northern Railroad Company. (1 I. C. C. Rep., 629.)

159. The fact that the rates of a railroad company are not established on a mileage basis does not necessarily make out their illegality or injustice.
160. A prayer in a petition against a railroad company, that the company be required to make its rates from one terminus to the town from which the petition proceeds and to other towns in the same section, and also from such terminus to the petitioning town and from thence to such other towns, on a uniform and equal mileage basis, can not be granted, the Commission having no power to require the adoption of such a basis.
161. A complaint will not be filed of which no reasonable ground for investigation appears.

In the matter of Underbilling. (1 I. C. C. Rep., 633.)

162. Underbilling, a device by which a shipper pays for the transportation of a less quantity of freight than is actually carried, and thereby obtains a reduced rate upon the gross shipment, is forbidden by the act to regulate commerce.
163. Unjust discrimination results from underbilling, in that the favored shipper pays a less sum than is charged others for the same service.
164. Common carriers are bound to exact equality in their service of the public.

165. Organized action by carriers to prevent underbilling commended; their duty to put an end to the practice insisted upon.
166. Carriers should be held, and in turn should hold every agent, responsible for the shipment of goods at exact weights and correctly classified.
167. Commissions paid to soliciting agents when divided with shippers effect a breach of the law.
168. Shippers should be required to extend to carriers the same honesty expected in other commercial transactions.
169. Preferences obtained by underbilling explained, and remedies suggested.
170. Legislation recommended imposing a moderate penalty upon shippers who willfully and fraudulently obtain reduced rates of transportation for their property.

John H. Martin and M. H. Martin *v.* The Southern Pacific Company, the Central Pacific Railroad Company, and the Union Pacific Railway Company. (2 I. C. C. Rep., 1.)

171. Mixed carload lots of freight are treated in different ways under the classifications employed in different parts of the country, resulting in much confusion and annoyance to shippers, especially upon traffic passing from one section to another. The immediate adoption of a uniform and reasonable rule urgently recommended.
172. Classification of dried fruits and raisins, both California products, in different classes, taking different rates of freight, works an injustice to shippers. In all matters of classification clearness and simplicity should be aimed at, and irregularities and inconsistencies should be eliminated.
173. Rates obtained by combination, which produce a lower rate than the tariff calls for, are unjust, because they enable an intelligent shipper to obtain an advantage over one who has less information, and they are illegal because they show two rates to the same point, over the same line, at the same time. The tariff rates should not exceed the combination rates in any case.
174. Violation of the fourth section of the act can be accomplished by differences in classification as well as by differences in tariff rates.
175. Canadian competition at the present time does not justify a higher charge from San Francisco to Denver than to Kansas City, it having been withdrawn at the latter point, and the Canadian road now working upon an agreement as to rates with the roads in the United States at all points where it formerly competed.
176. The great distance of Denver from the Missouri River of itself denotes an impropriety in the charges to that point which exceed those to Kansas City.
177. *In re* Louisville and Nashville Railroad Company (1 I. C. C. Rep., 31) affirmed; and in accordance with the principles there laid down, the conclusion follows that the greater charge for the shorter haul complained of in the present case can not now be justified.
178. The commission prefers to permit the carriers to work out for themselves all tariff details, and accords a reasonable time for that purpose.

Euclid Martin and others, constituting the freight bureau of the Omaha Board of Trade, *v.* the Chicago, Burlington and Quincy Railroad Company, the Chicago and Northwestern Railway Company, the Union Pacific Railway Company, the Chicago, Milwaukee and Saint Paul Railway Company, the Chicago, Rock Island and Pacific Railway Company, and the Burlington and Missouri River Railroad Company in Nebraska. (2 I. C. C. Rep., 25.)

179. The principles laid down in the case of Crews *v.* The Richmond and Danville Railroad Company (1 I. C. C. Rep., 401) restated and reaffirmed.
180. Trade centers of large commercial towns are not, as a matter of right, entitled to have more favorable rates than the smaller towns for which they form distributing centers; and if carriers shall give to such smaller towns rates as favorable as to the larger, the Commission will not interfere.
181. The fact that, under rates which are impartially arranged as between large and small towns, one large distributing center may have an advantage over another in competition for the business of the small towns, does not make out a case of undue preference in favor of the one distributing center as against the other. Impartial rates are not rendered illegal by their effect upon the business of localities.
182. A distributing center, however great or important, can not demand, as a matter of right, that the rates from a common source of supply to more distant and smaller towns shall be made up of the sum of the rate to itself and the rate thence to such smaller towns; but the carriers may make rates from the common source of supply to the smaller towns directly, as single rates; and if the single rate is less than the sum of the two which are made to and from the distributing center, it is not, for that reason, necessarily objectionable.

183. A case can not be decided on a theory which is neither presented by the complaint nor advanced on the taking of the testimony.
184. What constitutes local and what through rates considered.

The Business Men's Association of the State of Minnesota *v.* the Chicago, Saint Paul, Minneapolis and Omaha Railway Company. (2 I. C. C. Rep., 52.)

185. One feature of the transportation of freight by railroads in long hauls on joint rates, or what is usually called through rates, unless there be exceptional conditions which modify the rule, is that the rate per ton per mile grows less in proportion to the greater distance, while the aggregate of the rate increases in proportion to such greater distance; but this is not found to exist in the case of the local rates of a railroad, where the stations are occasionally grouped, but more usually graded according to distance, except as an incident of rare and highly exceptional conditions of the transportation service.
186. The method of testing the freight rates of a railroad by the rate per ton per mile is one by which these rates may be brought down to the narrowest point of scrutiny, and in this sense is valuable; but it is like looking at them with a microscope, for it ignores all other tests except that which it alone furnishes, and does not take into consideration any of the surrounding circumstances and conditions that enter into the making of the rate, no matter how compulsory or imperious these may be, and for this reason it can not be considered a controlling rule in determining the reasonableness of rates.
187. To determine the reasonableness and justness of any freight rate made by a railroad company, all the surrounding circumstances and conditions must be considered, as well as the rights of the shipper, and if these circumstances and conditions are so compulsory or imperious that they fairly and justly exercise any controlling influence in the making of the rate, they can not be disregarded in a proceeding in which the reasonableness and justness of the rate is presented for determination.
188. The words "substantially similar circumstances and conditions," as found in the second and fourth sections of the act to regulate commerce, in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example: If the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him. Or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him. But if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent State railroad, which is not subject to the act to regulate commerce, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line.
189. When a carrier, acting in good faith, has adopted an exceptional rate, not unreasonable in itself, on a portion of its line, because that rate has been forced upon it by an independent State railroad company in direct competition with it and not subject to the act to regulate commerce, the reasonableness and justness of rates on other portions of the carrier's line extending into a far interior region of the country where no such conditions exist, can not be measured, alone, by the standard thus furnished, but must be governed by considerations which fairly and justly apply to them.
190. The exceptional conditions of railroad transportation in proximity to the waterways of the great lakes, Michigan and Superior, and of rival competing railway lines operating between the ports on these lakes, as to the method of grouping stations under the combined effect of the competition of these waterways and of the fourth section of the act to regulate commerce, are found and stated by the Commission in this proceeding, citing and approving the Manufacturers and Jobbers' Union of La Crosse against the Chicago, Milwaukee and Saint Paul Railway Company (1 I. C. C. Rep., 632).
191. The conditions of transportation on that portion of defendant's lines in a broad extent of far interior country, where it is in competition with other great rival railway lines extending to Lake Michigan ports, while that of the defendant extends to Lake Superior ports, and the relation of each arising therefrom, examined, found, and considered by the Commission.

192. The act to regulate commerce was not enacted to destroy competition, and the establishment of the rule of the rate per ton per mile, insisted upon by the complainant, would have very much the effect of practically making the rates charged for a long distance at the stations along the line of the defendant and its great rivals, the Chicago, Milwaukee and Saint Paul Railway and the Minneapolis and Saint Louis Railway, in the nature of strict mileage rates, thereby destroying competition to a large extent at these stations, unsettling the business of their shippers, conferring upon them no practical benefits, and loading the business of the carrier and the shipper at every such station with a multitude of infinitesimal fractions nowhere known in the business of railroads.

193. Elaborate tariffs of rates, the result of competition, made by one of several great railway systems, all competing for the business of a large extent of territory, are examined and considered in connection with those of its competitors, and with a view not to break down the legitimate competition thus existing, whereby rates are cheapened to the public generally, and these railways are correspondingly benefited in performing the work for which they were chartered and constructed.

The Business Men's Association of the State of Minnesota *v.* The Chicago and Northwestern Railway Company. (2 I. C. C. Rep., 73.)

194. The circumstances and conditions as to the transportation of freight on the line of the defendant between Chicago and St. Peter, on the one hand, and between St. Peter and Pierre on the other, found, examined, and considered by the Commission, and held to be substantially dissimilar upon the facts set forth in the report and findings in this proceeding.

195. The rule of the rate per ton per mile decreasing for the greater distance while the rate is increasing in the aggregate, examined and discussed by the Commission in its application to the present proceeding, and held to be inapplicable.

196. The difference between the cost of service by which the local business of this railroad and its through business is done relatively, examined and considered by the Commission so far as they are involved in this proceeding.

197. Comparison of rates charged by railroad companies under circumstances and conditions substantially dissimilar really proves nothing, and can not be adopted as standards in arriving at the reasonableness and justice of rates.

198. Exceptional cases of rates made lower than other rates by a carrier on one portion of its line by the action of a competitor, and in which it is without fault itself under the operation of the act to regulate commerce, can not be adopted as the standard as to other rates upon a far distant portion of its line where no such exceptional conditions exist, and the reasonableness of its rates must be determined by altogether different considerations.

199. Where the evidence adduced in a proceeding like this fails to establish grounds relied upon, as stated in the complaint, and upon which it is heard and tried before the Commission by the parties and their counsel, and to which the evidence is directed, but shows that upon a portion of its line, as, for example, between St. Peter, in the State of Minnesota, and Pierre, in the Territory of Dakota, that the rates are made upon a basis which seems to grade them with large differences between stations contiguous to each other, and the grounds assigned for this by the carrier are the additional cost of service incident to operating a new line through a thinly inhabited and but little cultivated country, with very light traffic, and in which the transportation is seriously impeded by snow blockades, and where the coal used for fuel in operating the trains has to be brought by the carrier a distance of nearly 500 miles, but the evidence is not given with that fullness of detail which should sustain such extra rates of charge, the Commission, while it will not hold the rates to be unreasonable, will also not hold that they are reasonable, but will investigate this question in a separate proceeding under the statute by which all the parties in interest will have an opportunity to be fully heard, and can bring forward all the evidence upon a subject that is important and involving valuable rights, alike to the public and to the carrier.

200. When, in a proceeding such as this, evidence is introduced by a party and he is permitted to do so for the single purpose of the bearing it may have upon the reasonableness of the rate, which would be inadmissible for any other purpose, and it tends to show a difference of rates of the carrier by which a combination could be made of those rates upon the different tariffs that would be improper and unjust, the carrier not being allowed to controvert it upon the hearing, as to any other feature, except so far as it had a bearing upon the reasonableness of rates, because it would involve a collateral inquiry, the Commission will not determine this collateral inquiry or the

question it presents until an opportunity has been furnished the parties to be heard in a proceeding such as is provided for by the statute. For example: Where the complaint of the petitioner makes no allegation that under the tariffs of the carrier freight may be shipped from Chicago to St. Peter at one rate, there unloaded, and then subsequently reshipped from St. Peter to each of the stations between St. Peter and Pierre at a rate which, added to the rate from Chicago to St. Peter, is considerably less than the direct rate from Chicago to each of these stations, but on the hearing the complainant is allowed to introduce evidence upon this subject simply for the purpose of showing that the rates between St. Peter and Pierre are unreasonable and for no other purpose, the carrier having at the time the complaint was made a number of tariffs as follows: A distance tariff for the State of Illinois, a distant tariff for the State of Wisconsin, a distance tariff for the State of Minnesota, a distance tariff for the Territory of Dakota, local tariffs to and from all points on its line in each of the States through which it passes and the Territory of Dakota, and a tariff from and to Chicago and all points along its line, extending to Pierre, a distance of 781 miles.

William C. Scofield, Daniel Shurmer, John Teagle, and Charles W. Scofield, partners under the firm name and style of Scofield, Shurmer & Teagle; James R. Timmins and Andrew R. Timmins, partners under the firm name and style of J. R. Timmins & Co.; Christian J. Werwage, doing business under the name and style of The Manfacturer's Oil Company; John W. Fawcett and Thomas F. Wright, partners under the name and style of J. W. Fawcett & Co.; Alfred Whitaker, doing business under the name and style of The Brooks Oil Company; William F. Vliet, Willard L. Nutt, and Martin P. Case, partners under the name and style of Vliet, Nutt & Co.; W. Carroll Lawrence, Felix Burgert, Henry C. Meyers, and August E. Schade, partners under the name and style of The Merchants' Oil Company; The Excelsior Refining Company, a corporation organized under the laws of Ohio; The Globe Oil Company, a corporation organized under the laws of Ohio; The Cleveland Refining Company, a corporation organized under the laws of Ohio; Louis C. Carran, doing business under the name and style of L. C. Carran & Co., *v.* The Lake Shore and Michigan Southern Railway Company. (2 I. C. C. Rep., 90.)

201. Upon the facts of this case it is found, and held, that there is an unlawful preference given by the carrier, in favor of oil shipments in tank-car lots, as against like shipments in barrels, carload lots, which is ordered to be corrected, and the mode prescribed by which this must be done, giving equal rates on each per pound.

202. It is a common law and charter duty of every railway carrier subject to the act to regulate commerce to furnish a proper and adequate car equipment for all the reasonable needs of the business it advertises and undertakes to do, and if the carrier fails to do this, to the wrongful injury of the shipper, it is liable in damages therefor, but the statute has not clothed the Interstate Commerce Commission with the jurisdiction to order the carrier to furnish any particular equipment of cars, or in fact, any cars at all. It is the duty of such carrier to select and furnish its own equipment of cars, under all the responsibility which the law requires of it in so vital and important a matter, for the public has not undertaken to divide responsibility with the carrier in this respect.

203. The law does not forbid a carrier from obtaining cars for the transportation of freight over its line from other carriers or car-furnishing companies, but in every such instance the rates of freight must be exactly the same, and none other, as they would be, if such cars were owned by the carriers so using them.

204. The law does not forbid a carrier from obtaining cars from a shipper for the transportation of such shipper's freight over its line, but in every such instance, after deducting a reasonable rent published in the tariff as part of the rate and paid by the carrier to the shippers for the use of such cars, the rates must be exactly the same, and none other, as upon freight transported in the same service in the carrier's own cars; and in every such transaction the carrier, at his peril, must see to it that a shipper furnishing his own cars receives no other or different rates than other shippers who use the cars of the carrier for a similar service.

205. To render a preference of one over another unlawful, under the act to regulate commerce, it is not necessary that it should be accomplished by any "device," and it is equally true that the ingenuity of man can not invent a "device" for the perpetration of an unlawful preference on the part of a carrier engaged in interstate commerce without incurring the penalties prescribed by the statute.

206. In this particular instance, on account of the phenomenal differences in expense of service rendered, the exceptionally high rates on oil in barrels less than carload lots as compared with oil in carload lots are sustained, but the defendant and all other carriers engaged in interstate commerce are notified that there seems to be too great a tendency on their part to make excessive differences in favor of all shipments generally in carload lots as against shipments of similar articles in less than carload lots, and that it would be well for each of them to look to their tariffs in this respect before the Commission takes further action on this subject.

Frank L. Hurlburt *v.* The Lake Shore and Michigan Southern Railway Company. (2 I. C. C. Rep., 122.)

207. In a proceeding to correct a classification of freight made by the initial carrier, which freight before reaching its destination must pass over the roads of several carriers, it is proper to make all such carriers parties; but if the initial carrier alone is made defendant, the proceeding is not for that reason defective. An order requiring that carrier to make the correction will be effectual for the purposes of all subsequent consignments, and there is no difficulty in its being complied with without asking the consent of others.

208. Persons having an interest in a question pending before the Commission will be allowed to appear and be heard when the case is being submitted without their being made formal parties.

209. Assurances made by a carrier that if one will locate in business on the line of its road his property shall be taken for transportation as belonging to a specified class can not bind the carrier so as to compel a classification accordingly. A right to special rates can not be made out in that way; the classification must have the same construction in favor of all persons; the law requires uniformity and impartiality in the dealings of a carrier with all persons.

210. The railway officials who have made a classification can not testify to their understanding of its construction. A classification sheet is put before the public for general information; it is supposed to be expressed in plain terms so that the ordinary business men can understand it, and in connection with the rate sheets can determine for himself what he can be lawfully charged for transportation. The persons who prepared the classification have no more authority to construe it than anybody else, and they must leave it to speak for itself.

211. It is competent to prove by the testimony of witnesses in what sense terms of art or terms peculiar to any occupation or business are used by those engaged in such occupation or business. But when such terms are made use of in a classification sheet to designate the product of a particular employment, they are supposed to be used as understood in that employment, and it is not competent for railroad experts, when the meaning of the classification is in question, to testify in what sense they are understood in transportation circles.

212. Under a classification which puts lumber in carload lots in the sixth class, and unfinished wagon materials in the fifth class, it is held that hub blocks which are prepared as such to be sold to the manufacturers of hubs and of wheeled vehicles, but upon which only so much labor has been expended as is needful to put them in condition for seasoning, are to be regarded as the raw material upon which the process of manufacture of hubs is not yet begun, just as boards or the raw material from which wagon boxes are made. The blocks belong, therefore, when not otherwise specified, in the classification sheet with lumber, instead of with unfinished wagon materials.

John W. S. Brady and George T. Parkhurst, partners, trading under the firm name of J. Parkhurst & Co., *v.* The Pennsylvania Railroad Company, The Pennsylvania Company, the Pittsburgh, Cincinnati and Saint Louis Railway Company. (2 I C. C. Rep., 131.)

John Henry Nicolai, trading as "Eagle Oil Works," *v.* The Pennsylvania Railroad Company, the Pennsylvania Company, the Pittsburgh, Cincinnati and Saint Louis Railway Company.

213. Through and continuous lines imply through rates, which must be reasonable rates.

214. When railroad companies make a through and continuous line and offer it for the use of the public, they can not rid themselves of responsibility for unjust charges by breaking the haul in two and calling themselves carriers on the separate ends of their through line.

215. The Pennsylvania Railroad Company operates a part of a through line which it joins in making, and owns a controlling interest in the capital stock of the Pittsburgh, Cincinnati and Saint Louis Railway Company, by which the other part is operated. *Held*, That the Pennsylvania Railroad Company can not free itself from the responsibility of excessive through rates by getting behind the corporate existence of the other company as a separate carrier.

216. The apportionment of rates to different parts of a through line does not determine the charge to the public, but may be significant on the question of reasonable rates for the whole distance.

217. The danger from transportation of oil through Pittsburg when apportioned upon all the business is deemed so unimportant as not to materially affect the rates which should be charged.

The New Jersey Fruit Exchange *v.* The Central Railroad Company of New Jersey and the Lehigh Valley Railroad Company. (2 I. C. C. Rep., 142.)

218. Rates for the transportation of fruit. The traffic originates in the State of New Jersey, and is destined to the city of New York. But the delivery by the defendants to the consignees is made at Jersey City, in New Jersey, and the rates of defendants are made not to New York, but to Jersey City. Under these facts, the traffic, so far as defendants conduct it, is not interstate, and the Commission has no jurisdiction over their rates.

219. As to certain traffic originating in New Jersey and destined to Pennsylvania, it is held that the showing is too indefinite for any conclusion.

The Lincoln Board of Trade *v.* The Burlington and Missouri River Railroad Company in Nebraska, and the Chicago, Burlington and Quincy Railroad Company. (2 I. C. C. Rep., 147.)

220. Municipal subscriptions or gratuities do not affect the question of undue preference under section 3 of the act to regulate commerce.

221. Disparity in existing rates to Lincoln and to Omaha found to correspond so closely with the difference in distance that no change is required upon that ground.

222. Principle that the ratio of rates should decrease with increase of distance conceded, but modifying conditions often exist; some of them stated; as applied to the facts in this case, no change in rates required.

223. Lincoln is not naturally entitled to the same rates from Chicago as Omaha, and if such rates were conceded Omaha would probably have a valid ground of complaint.

The Kentucky and Indiana Bridge Company *v.* The Louisville and Nashville Railroad Company. (2 I. C. C. Rep., 162.)

224. The Kentucky and Indiana Bridge Company has the chartered powers of a common carrier, and is such *de facto*. It is, therefore, under the act to regulate commerce, entitled to demand of railroad companies whose lines are intersected by its tracks the same reasonable, proper, and equal facilities for the interchange of traffic and for the receiving, forwarding, and delivering of property that may lawfully be demanded by other carriers under that act.

225. The Louisville and Nashville Railroad Company united with other companies having lines terminating on the Ohio River at or opposite Louisville in a contract whereby it was agreed that all their business across the river at that point should be taken over the Louisville bridge. The Louisville Bridge Company was a party to the contract, and the tolls were dependent on the amount of business done, and were diminished as the debt of the bridge company was paid off from funds derived from tolls. A new bridge being constructed over the river at this point, one of the railroad companies which had contracted to take all its business over the old bridge transferred the business to the new bridge. The Louisville and Nashville Railroad Company thereupon refused to receive for transportation over its line any freights which had been brought over the new bridge in violation of the contract made with it. *Held*, that this refusal was unlawful.

226. A common carrier by rail to which property is offered for transportation can not in this indirect manner, and by refusal to perform obligations imposed by law upon it, enforce its contracts, but must for that purpose resort to the customary remedies.

227. Nor can a common carrier, as a reason for refusal to afford to another common carrier the customary, reasonable, and equal facilities for the interchange of traffic, assign the fact that such other common carrier supplies no public necessity, the public having been fully accommodated without it. All railroads created by competent public authority must be conclusively presumed

to be public conveniences, and other common carriers can not refuse to exchange traffic with them on any suggestion or showing to the contrary.

228. The fact that statutory regulations of internal commerce are such as to preclude the literal enforcement of preexisting contracts does not affect their validity or make them in a constitutional sense laws impairing the obligation of contracts. Such a consequence is often a necessary result of any considerable change in the general laws, and must be submitted to as such.

229. When a question of rates as between two carriers is involved, the Commission will express no opinion upon it in a case to which one of the carriers is not a party.

The Lincoln Board of Trade *v.* The Union Pacific Railway Company and the Southern Pacific Railway Company. (2 I. C. C. Rep., 229.)

230. The grounds of complaint stated in the petition having been obviated by changes in the rate sheets, the Commission abstains from any expression of opinion upon them.

The case above entitled was heard at Lincoln, Nebr., March 21 and 22, 1888, where voluminous testimony was taken. The following cases were heard with it: I. Friend & Son *v.* The Southern Pacific Company, The Denver and Rio Grande Railway Company, and the Burlington and Missouri River Railroad Company. Raymond Brothers & Co. *v.* The Chicago, Burlington and Quincy Railroad Company, The Denver and Rio Grande Railway Company, The Denver and Rio Grande Western Railway Company, and the Southern Pacific Company. Plummer, Perry & Co. *v.* The Union Pacific Railway Company and The Southern Pacific Railway Company (two cases). The Lincoln Board of Trade *v.* The Burlington and Missouri River Railroad Company in Nebraska, The Chicago, Burlington and Quincy Railroad Company, The Denver and Rio Grande Railway Company, The Denver and Rio Grande Western Railway Company, and the Southern Pacific Railway Company.

The Lincoln Board of Trade *v.* The Missouri Pacific Railway Company. (2 I. C. C. Rep., 155.)

231. Distance by shortest route is properly to be considered in determining the propriety of rates by a longer competing line.

232. Rates from St. Louis to Omaha a little higher than those charged to Lincoln, which is a trifle less distance upon a branch line, sustained under the peculiar circumstances of the case.

233. Consideration should be had of consequences which might follow a modification of the principle upon which the rates complained of are constructed.

234. The general plan upon which rates are constructed from Chicago and St. Louis to Missouri River points and interior Nebraska points approved, no better system being as yet suggested. Difficulties which might result from throwing this system into confusion stated.

235. The operation of the fourth section of the act controls the extent to which Missouri River rates extend into the interior of Nebraska and Kansas; Lincoln and other towns lying west of that line must accept their geographical situation and its consequences.

The Delaware State Grange of the Patrons of Husbandry *v.* The New York, Philadelphia and Norfolk Railroad Company *et al.* (2 I. C. C. Rep., 309.)

236. The Commission is liberal in allowing amendments to complaints, but will not allow one that would be in effect making a new case.

237. Amendment is not necessary to bring in matters that would have been the subject of proof under the complaint as originally filed.

238. A case involving local rates ordered to be heard before the Commission at a central point in the territory immediately affected by the rates.

In the matter of the Chicago, St. Paul and Kansas City Railway Company. (2 I. C. C. Rep., 231.)

239. A railroad company which, for cases not apparently affected by water competition or by the competition of carriers not subject to the act to regulate commerce, had issued rate sheets which in many cases made for the transportation of like freights the greater charge for the shorter haul on the same line in the same direction, the shorter being included in the longer distance, was called upon to justify such rate sheets at a public hearing.

240. Notice ordered to be published of such hearing, that competing carriers and the public generally might have opportunity to attend and be heard.

241. The showing by respondent that a competitor for business between the termini of its line makes charges for the transportation of freight which are below what are reasonable and just to the carrier itself, does not alone make out the dissimilar circumstances and conditions entitling the respond-

ent to make charges for the transportation of freight from one terminus to an intermediate station which are greater than those made for the transportation of like freights from the same terminus to the other.

242. The provision in the first section of the act to regulate commerce, that "all charges made for any service rendered, or to be rendered, in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful," does not render rates that are unreasonably low illegal in a sense that will authorize the Commission to prohibit their being made.

243. The Commission has no power to order rates to be increased upon the ground that they are so low that persistence in making them would be ruinous.

244. Congress, in the provision above recited regarding rates, was legislating for the protection of the general public, and not for the protection of the carriers against the unreasonable action of their own officers, or against excessive competition. The act to regulate commerce assumes that the carriers, in their power to make rates, have ample remedy to protect against rates which are unreasonably low.

245. A leading purpose of the act to regulate commerce is to prevent the giving of unjust preferences and advantages as between localities in railroad transportation. This purpose would be defeated if any one carrier by making unreasonably low rates to any locality would thereby entitle all other carriers competing with it to make on their lines greater charges upon the shorter hauls to other stations than were made over the same line in the same direction to the locality thus favored.

Nathaniel W. Howell, Hiram A. Pooler, Charles M. Thompson, Cornelius B. Wood, and A. T. Moshier, as as a committee of the farmers and milk producers of Orange County, N. Y., *v.* The New York, Lake Erie and Western Railroad Company, The New York, Ontario and Western Railway Company, The New York, Susquehanna and Western Railroad Company, and the Lehigh and Hudson River Railway Company. (2 I. C. C. Rep., 272.)

246. A question of reasonable rates can not be properly decided without full knowledge of all the facts concerning the particular traffic in question and its relations to the other traffic of the carrier. Some of the elements stated which are necessary and proper to be considered.

247. Proof that certain rates are very profitable to the road, and that they are higher than the rates charged on certain other somewhat similar commodities, is not of itself a sufficient ground for determining either that such rates are unjust or what rates would be just and reasonable for the traffic in question.

248. Case retained for further showing upon the question of the reasonableness of the rates charged for transportation of milk and cream from producing points to Jersey City.

249. Grouped rates not peculiar to milk traffic. Other instances stated and distinguished.

250. Transportation of milk an exceedingly peculiar kind of traffic. Time of the first importance. Arrangements stated by means of which the delivery of a regular daily supply to all consumers in large cities is accomplished. The elements of extra expense are substantially the same upon milk transported from every part of the line of road over which the special milk train runs.

251. Grouping of milk rates over large extent of territory not shown to injuriously affect the producers who complain; their product is not reduced in value, nor is any part of it left unsold, while the requirements of consumers demand a steadily increasing area of supply.

252. Prejudice and advantage become undue and unreasonable when the results are such as to effect some tangible injury to the complaining party. Without some proof of damage resulting to complainants, an advantage in rates as related to distance is not necessarily undue or unreasonable, no substantial difference in expense appearing to exist.

253. The existing arrangement by which the same rate is charged for the transportation of milk from all points reached by the regular daily milk trains of the defendant roads found to be not illegal, and on the whole to be the best system that can be devised for the general good of all interested parties.

254. A considerable additional expense, such as is involved in the collection of milk beyond the end of the route of the milk train, is a fact in consideration of which a somewhat higher rate would be just, and is, perhaps, necessary in order to properly equalize the proportionate privileges of the traffic.

The Spartanburg Board of Trade *v.* The Richmond and Danville Railroad Company, The Central Railroad and Banking Company of Georgia, The Louisville and Nashville Railroad Company, The Augusta and Knoxville Railroad Company, The Port Royal and Augusta Railroad Company, The Port Royal and Western Carolina Railroad Company, The Ohio and Mississippi Railway Company, The Nashville, Chattanooga and Saint Louis Railway Company, The Saint Louis, Iron Mountain and Southern Railway Company, The Chicago, Saint Louis and Pittsburg Railroad Company, The Jeffersonville, Madison and Indianapolis Railroad Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Cincinnati Southern Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, The Western and Atlantic Railroad Company, The Western North Carolina Railroad Company, The Asheville and Spartanburg Railroad Company, The Georgia Railroad Company, The Illinois Central Railroad Company, and The Cincinnati, Indianapolis, Saint Louis and Chicago Railway Company. (2 I. C. C. Rep., 304.)

255. The Commission is not willing to determine the relative reasonableness of rates at many stations, and in a large extent of territory, upon the mere face of tariffs, and without further proof.

256. Where it is obvious that there are many parties interested as directly as is the complainant in the question before the Commission, opportunity will be given them to appear on the taking of evidence.

257. Where, on a question of rates, it appears that higher rates are made upon the shorter hauls on the same line and in the same direction, the carrier making them must take the burden of proof to show their reasonableness.

258. A case finally submitted without evidence ordered adjourned to a future day for the purpose of taking evidence on the principle above stated.

C. H. Griffe *v.* The Burlington and Missouri River Railroad Company in Nebraska, and also as lessee of The Atchison and Nebraska Railroad. (2 I. C. C. Rep., 301.)

259. The offense under section 2 of the act to regulate commerce of giving free transportation to an individual consists in the charging, demanding, collecting, or receiving by the carrier from some other person or persons a compensation for a like service when none is contemporaneously charged or received from the person thus transported free.

260. Where a free pass was given to a discharged employé of the company on the assumption that he might still be regarded as an employé, but it affirmatively appeared that it was never used, and that it expired in the hands of the party to whom it was issued by a limitation contained on its face, and was produced before the Commission as an unused instrument in a proceeding in which a complaint of its issue was made, *held*, that the facts did not show that a breach of the third section of the act had been committed, no free transportation whatever having been had, and the party being entitled to none according to the terms of the instrument as it then was.

The Detroit Board of Trade and the Detroit Merchants' and Manufacturers' Exchange *v.* The Grand Trunk Railway of Canada and The New York Central and Hudson River Railroad Company. (2 I. C. C. Rep., 315.)

261. When freight—for example, grain—is hauled to the seaboard for export, or to New England points, from the Northwestern States and Territories of the American Union; or when freight is hauled from the seaboard or New England to points to the Northwestern States or Territories through the cities of Detroit and Chicago, the rule invoked by the petitioners in this case as a basis of relief, namely, that an estimated portion of this through rate as between the points of origin of the freight and Detroit, must not be lower in proportion to distance than the rate upon the freight from such points of origin destined to Detroit, is one that can not be sustained.

262. Rates must be relatively fair and reasonable as between localities in essential respects similarly situated, not according to any rule of mathematical precision, but in substance and in fact, having regard to the geographical and relative positions of the localities, so that one will not be favored to the unjust prejudice of the other.

263. Where a system of rates is made by a number of carriers covering a widely extended territory which seem to be reasonable in themselves and relatively fair, so far as the evidence in this case shows, the Commission will not order them to be changed at one important point, thereby rendering other changes unavoidable at a large number of other points, and throwing the rates of the entire system into confusion and unsettling values, unless a case arises in which it is necessary that this should be done in order to enforce compliance with the law and to reach the ends of substantial justice.

In the matter of the Tariffs of the Transcontinental Lines. (2 I. C. C. Rep., 324.)

264. Rates that are just and reasonable from selected manufacturing points, through the entire territory east of the Missouri River and west of the Atlantic sea-

board, are *prima facie* just and reasonable from all other points in the same territory.

265. A tariff naming a rate from one locality lower than that enjoyed by its neighbor, when the circumstances are the same, tenders a preference or advantage to the first; and when any shipper is damaged by the exaction of an additional burden the preference becomes undue and unreasonable, unless it can be justified upon some sound and substantial ground.

266. Common carriers are under obligations to take all descriptions of ordinary traffic from all points, and it is right that the rates should be known and announced publicly in advance of the offering of traffic.

267. Under the act to regulate commerce, shippers are not to be put in a position of subserviency to common carriers, nor required to ask for rates, but are entitled to equal and open rates at all times.

268. Discriminations are made and undue advantages are given by the special tariffs in question, in giving different rates to places named and those not named; to manufactured articles named and those not named; to jobbers at places named and those not named; to manufacturers and to jobbers and other dealers.

James C. Savery & Co., doing business under the name of The American Emigrant Company, *v.* The New York Central and Hudson River Railroad Company, The New York, West Shore and Buffalo Railway Company, The New York, Ontario and Western Railway Company, The New York, Lake Erie and Western Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Pennsylvania Railroad Company, and The Baltimore and Ohio Railroad Company. (2 I. C. C. Rep., 338.)

269. The matter of the reception of immigrants at the port of New York having been put by the laws of the State under the control of a board of commissioners of emigration, and that board having made such regulations as it has deemed desirable for the protection of the immigrants until they are ticketed and put on board railroad trains for their respective ultimate destinations, and the Federal Government, through its legislative and executive departments, having sanctioned the control by the commissioners of emigration, the Interstate Commerce Commission has no authority to interfere with their regulations.

270. Not having the authority to interfere directly and control the commissioners of emigration, it can not do so indirectly by inhibiting the railroad companies from carrying out the arrangements made by the commissioners with them.

271. There is nothing illegal or wrongful in a railroad company making a rate for immigrants as a class, and declining to give the same rate to others for whom different accommodations are furnished.

272. A railroad company which transports immigrants in unfit cars will be required to provide better accommodations, and to ascertain their fitness the Commission will make its own inspection.

273. The rates complained of in this case as excessive were voluntarily reduced pending the proceedings.

James F. Slater *v.* The Northern Pacific Railroad Company. (2 I. C. C. Rep., 359.)

274. A complaint made for the purpose of retaliation for a fancied wrong, as to get even with a carrier for the revocation of complainant's pass, does not commend itself to the Commission.

275. A carrier which has conformed to the ruling of the Commission should not be prosecuted for alleged violations of law in that respect which have occurred before such ruling was made, and under a construction of the law then approved by the carrier's counsel.

276. Free transportation issued in the form of an annual pass to a person not in the regular and stated service of the carrier nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in its way what business he conveniently could, *held* to be illegal.

In the matter of Relative Tank and Barrel Rates on Oil. (2 I. C. C. Rep., 365.)

277. In deciding a case against one or more carriers who are charged with making rates which are unjustly discriminating in a certain line of traffic, the decision made upon the facts of the particular case does not necessarily govern rates in other sections of the country where the facts bearing upon them may be altogether different.

278. In cases against carriers who were charged with discriminating unjustly in their rates as against those shipping petroleum and its products in barrels in favor of those who shipped in tank cars, the evidence, among other

things, showed that in the territory served by the defendants the shipment in barrels was most dangerous, and also that when shipment was in tanks there was greater likelihood of return loads. The difference in rates made by the carriers was considerable; the Commission equalized this, but still permitted a charge for the weight of the barrel.

279. In the same cases it was incidentally made to appear that on the Pennsylvania system of roads some of the conditions affecting rates on this traffic were the reverse of those above stated, and the rates had therefore been made the same by quantity, whether the shipment was in tanks or barrels. On the decision above referred to being made the rates on barrel oil were raised by the managers of the Pennsylvania system so as to include a charge for the weight of the barrel. This was claimed to be done in order to come into conformity with the action of the Commission. *Held*, That the action was unwarranted. A decision on facts does not establish a principle to govern where the facts are different, and no facts which had been laid before the Commission would have authorized a ruling raising the rates on the Pennsylvania road on barrel oil, either absolutely or relatively.

The New Orleans Cotton Exchange *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, The Vicksburg and Meridian Railroad Company, The Vicksburg, Shreveport and Pacific Railroad Company, and the New Orleans and Northeastern Railroad Company. (2 I. C. C. Rep., 375.)

280. To correctly estimate the causes influencing the movement of cotton and the falling off in the proportion of the crop received at New Orleans in recent years, the rail lines of transportation constructed improved methods, and new conditions must be taken into account.

281. Whether railroad companies combine or act separately in making rates and charges is not so important. The essential requirement is that, however made, they shall be reasonable of themselves and so fairly adjusted as to be reasonable in their relations to each other and in their results.

282. That under like conditions freight can be carried proportionally lower for long than short distances is as nearly settled as anything relating to railroad charges can be. Equal mileage rates would often prevent legitimate competition and give a monopoly in transportation to the best and shortest road.

283. The reasonableness of rates can not be fairly determined in a proceeding to which some of the parties responsible for such rates are not parties.

284. Commerce between points in the same State, but which in being carried from one place to the other passes through another State, is interstate commerce, and subject to regulation by the provisions of the act to regulate commerce.

285. In determining what are reasonable rates the fact that a road earns little more than operating expenses is not to be overlooked, but it can not be made to justify grossly excessive rates. Wherever there are more roads than the business at fair rates will remunerate, they must rely upon future earnings for the return of investments and profits.

286. To be reasonable, the rate from Meridian to New Orleans should not exceed $1.50 per bale, compressed cotton.

Rice Robinson and Witherop *v.* The Western New York and Pennsylvania Railroad Company. (2 I. C. C. Rep., 389.)

287. Where unreasonableness of freight rates on oil in carload lots is charged on short local hauls, for example, from Titusville, Pa., to Buffalo, N. Y., and the charge is attempted to be sustained on a comparison of these rates with rates on what is usually an inferior grade of oil transported from Titusville through Buffalo to Perth Amboy, N. J., for export, chiefly in the cars of another company, and it appears that upon such shipments destined to Buffalo there are expensive terminal charges, while upon such shipments to Perth Amboy these terminal charges are far less considerable, the circumstances and conditions which control the making of the rates in each instance are substantially dissimilar.

288. In arriving at what is a just and reasonable rate on freight transported by a carrier on a short local line, having but a small volume of business, where the cost of transportation is exceptionally great, arising from steep grades, sparse population, and light traffic, these are circumstances and conditions of controlling weight in the making of the rates and can not be overlooked when a question of their reasonableness is involved, and under such circumstances the fact that an independent pipe line from Titusville to Buffalo transports oil between these points at lower rates than the railroad company constitutes no just reason why the railroad company should be required to reduce its rates to those of the pipe line.

289. Where a change of rates, for example, those on the defendant's line in this instance, would involve a reduction of rates on the Dunkirk, Allegheny, Pittsburg, and other competing lines not parties to this proceeding, and unsettled relative rates in a large extent of territory, such a change ought not to be made unless based upon adequate grounds.
290. The charge of unjust discrimination is not sustained by the evidence in this case.

In the matter of Passenger Tariffs and Rate Wars. (2 I. C. C. Rep., 513.)

291. Reduction of passenger rates without consent of connecting lines over which tickets are sold, and without filing schedules thereof with the Commission, *held* to be in violation of section 6 of the act to regulate commerce.
292. A passenger rate war in which rates were repeatedly reduced by several competing lines to an exceedingly low basis on a particular class of traffic, without any filing of tariffs, was contrary to the requirements of law, as well as against the true interest of each party thereto.
293. Reductions in competitive passenger rates can not legally be made without at the same time reducing intermediate rates, as required by the fourth section of the act.
294. No necessity or compulsion is created by a war of rates which justifies disobedience of the statute.
295. The employment of ticket brokers and scalpers for the sale of railroad tickets placed in their hands to be disposed of at reduced rates under the pretense of paying commissions thereon, *held* illegal.
296. Rates lower than the established tariff are prohibited by law.
297. Rates obtained from ticket brokers lower than those offered at the regular offices of the company effect unjust discrimination.
298. The business of ticket brokers and scalpers investigated and described.
299. Existing methods respecting excursion and mileage tickets considered and found to lead to various abuses.
300. Recommendations made for amendment of the law.

William P. Rend *v.* The Chicago and Northwestern Railway Company. (2 I. C. C. Rep., 540.)

301. Group rates may be properly made from a large number of mines composing a coal-mining district extending across the State of Illinois to points in western Wisconsin, Minnesota, and Dakota, the distance from each part of the group by some route being substantially a fair equivalent of the distance from other parts, and the commercial necessities being substantially the same for all.
302. The group rate so established is properly extended to coal shipped to the same territory locally from Chicago, no lower rate being possible on account of the operation of the fourth section of the act, some of the lines passing through the mining district en route from Chicago to the points of distribution.
303. Through rates by way of Chicago to the same territory from mines in the eastern part of the group are necessarily made the same with the group rates established on other routes from the same vicinity, and their discontinuance would simply leave the market open to the product of other Illinois mines at the same transportation charge.
304. Under the exceptional circumstances requiring such through rates, shippers locally from Chicago of Ohio and Pennsylvania coal can not justly insist upon rates no higher than the division of such through rate which appertains to the lines running northwest from that city, the circumstances under which the through rate is made being such that it can not be differently adjusted.
305. The question of relative injustice must be viewed upon broader grounds than a mere balancing of one rate against another. A reduction which will throw into confusion an adjustment of rates over a large section of country which are not claimed to be unreasonable of themselves, should not be required without a clear right thereto exists under some direct provision of the law.
306. A reduction of the rates on local shipments from Chicago to the proportion received by the northwestern lines upon the division of the through rates aforesaid would involve either a general reduction from the entire group under the short-haul clause of the law or an abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all other interests. Under such circumstances the preference is not undue nor is the advantage complained of unreasonable.

The Chamber of Commerce of the City of Milwaukee *v.* The Flint and Pere Marquette Railroad Company and the Detroit, Grand Haven and Milwaukee Railway Company. (2 I. C. C. Rep., 553.)

307. The rate of 30½ cents per hundred pounds on wheat, flour, and mill stuffs from Minneapolis *via* Milwaukee to New York and common billing points, established by the defendants and their connecting lines February 1, 1888, was a through rate.

308. The percentage, amounting to 25 cents per 100 pounds, received by the defendants and their connecting lines east of Milwaukee as their proportion of this through rate on shipments from Minneapolis and points west of Milwaukee, and between Milwaukee and Minneapolis, while the defendants charge 25½ cents per 100 pounds on the same class of freight originating at Milwaukee and transported over their lines and connecting lines to eastern points, was not an unjust discrimination against Milwaukee, nor did it injure the business of Milwaukee, nor was it a violation of the act to regulate commerce, approved February 4, 1887.

309. A rate is none the less a through rate when freight is shipped upon a through bill of lading from the point of origin to destination, accompanied by a way bill showing the route over which it is to pass, with the percentages of all the other lines set forth on the way bill, because the initial carrier charges its local rate as part of the total rate and the remaining lines charge an agreed rate made by percentages.

310. When a combined rate, evidenced by a through bill of lading from the point of origin to destination, has every substantial constituent of a through rate, it is not necessary that it should be formally "quoted" by one of the carriers to another who is engaged in the making of it in order to constitute it a through rate. Names are nothing in such a transaction; the law looks at the elements and substance of the transaction itself.

311. Through rates, as such, discussed and defined.

312. Through rates, like any other agreements that parties competent to contract may make, admit of very great variety in the forms they assume; and such rates, when reasonable and fairly adjusted, in their relations to local business, are greatly favored in the law because they furnish cheapened rates and greater facilities to the public, while at the same time they give increased employment and earnings to a larger number of carriers.

313. The difference between proportions of through rates along the same lines should be fairly reasonable in amount and properly guarded in their application, and not such as to injure or suppress business in one locality in order that it may be stimulated and built up in another.

314. Where a rate is in itself a through rate and made up of percentages to an intermediate point on a long haul, the circumstances and conditions of transportation must be rarely exceptional indeed to be of such controlling force as to warrant any considerable excess of such a rate in amount over a percentage of a through rate for an equal distance along the same line by way of the same point to a more distant point.

315. Milling in transit rates as part of a through rate in this case discussed.

Milton L. Myers, survivor of Hostetter & Company, *v.* The Pennsylvania Company, operating The Pittsburgh, Fort Wayne and Chicago Railway, The Baltimore and Ohio Railroad Company, The Lake Shore and Michigan Southern Railway Company, The Pittsburgh and Lake Erie Railroad Company, The New York Central and Hudson River Railroad Company, The Allegheny Valley Railroad Company, and The Pennsylvania Railroad Company. (2 I. C. C. Rep., 573.)

316. Hostetter's Stomach Bitters, prior to the act to regulate commerce, were shipped under the Middle and Western States Classification in the third class in less than carloads, and in the fourth class in carloads.

317. Bitters generally in that classification were classed in first class in less than carloads, but were also put in the third class, with the specification "Manufacturer's account, released by shipper," under which these bitters were shipped. No other article, except wine, was so classified and shipped.

318. After the act to regulate commerce the Official Trunk-Line Classification superseded the former classification and bitters were classified in first class, with other liquids similar in character, marketable value, and manner of shipment. The class rates under the Official Classification are lower than under the one previously used.

319. In October, 1888, by a change in the Official Classification, bitters in carloads were placed in third class.

320. On complaint for unjust and unreasonable rates: *Held*, That a former special and preferred rate is not a fair test of the reasonableness of a present rate.

321. The proper classification of an article is to be judged relatively by the classification of other articles similar in character, equality, and conditions of transportation.

322. The rate on bitters as at present classified, compared with analogous articles, is not so unreasonable as to demand a change of the classification of that particular article. The propriety and extent of a change can more appropriately be acted upon in connection with other articles, in a general revision of the classification.

L. Lippman & Co. *v.* The Illinois Central Railroad Company. (2 I. C. C. Rep., 584.)

323. A railroad company is under special obligation to give reasonable rates for its local business, but there are many influences which may affect through rates while not bearing upon local rates at all, or, if at all, in less degree.

324. Through rates are not necessarily illegal which when divided between carriers give them less than their local rates, provided that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed.

In the matter of the Petition of the Produce Exchange of Toledo. (2 I. C. C. Rep., 588.)

325. After a complaint upon elaborate pleadings and proofs has been heard and determined by the Commission, and no party to the proceeding has applied for a rehearing, an application for a rehearing made by others who were not parties to the proceeding will not be granted.

326. In such a case, if upon a new or different complaint it should appear that any conclusion of the Commission in the case so decided has been erroneous, the Commission would feel it to be a duty to correct such conclusion.

327. Where relative rates are the same at points not far distant from each other on the same system of railroads, it is the practice of the Commission in determining the reasonableness of rates upon a complaint made at one of these points to consider the bearings and relative equality of rates at all of the points so situated before ordering a change at any one of them in order to avoid preference to one and prejudice to another.

The Michigan Congress-Water Company *v.* The Chicago and Grand Trunk Railway Company. (2 I. C. C. Rep., 594.)

328. Where a complaint is made against the reasonableness of through rates agreed upon by several connecting lines, it is necessary to make all such connecting lines parties defendant. Citing and affirming the rule laid down on this subject in 1 I. C. C. Rep., 199; 1 I. C. C. Rep., 237; 1 I. C. C. Rep., 490.

329. Unauthorized declarations of a depot agent, implying that a tank car which has just returned from one long journey is in a safe condition to be loaded and started on another long run, are not binding upon the railway company.

330. After a freight tank car has just returned from one long journey it is the duty of the carrier, before permitting it to start out loaded on another distant run, in which the lives and safety of brakemen, trainmen, and the property of the shipper will be involved, to have such car carefully inspected by a competent inspector, in order to ascertain whether it is in a safe condition for such service.

331. On all the facts in this case, *held* (1) that the tank car of complainant when loaded was not in a safe condition to be transported by the defendant in April, 1888, and that it was not the duty of defendant to transport it at that time; but it was the duty of complainant to have it repaired before insisting upon its being transported by the defendant; (2) that neither the defendant nor any of its officers and agents have been engaged, as complained, in combinations with connecting lines, or other parties, to prevent complainant from obtaining reasonable rates and facilities for the transportation of its mineral water, or to give other mineral waters a preference in rates and facilities over those accorded to complainant; (3) that defendant's officials and agents have not acted in a malevolent spirit toward complainant in throwing obstructions in the way of its transporting mineral water over defendant's line and its connecting lines.

T. M. C. Logan, F. D. Babcock, and E. M. Parsons, executive committee of the Northwestern Iowa Grain and Stock Shippers' Association, *v.* Chicago and North-Western Railway Company. (2 I. C. C. Rep., 604.)

332. The service may be rendered under such dissimilar circumstances as to make it lawful to charge more for the same distance on one line or branch than on another line or branch of the same road.

333. A departure from the rule of equal mileage rates as applied to the several branches of the road is not conclusive that such rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed.

334. A railroad company while long maintaining a rate without the presence of competition on other than equal terms is making evidence that such rate is not too low.

335. The Chicago and North-Western Railway Company has two routes or lines between Chicago and Sioux City, formed by its main line and different branch lines, and a greater charge for a shorter than for a longer distance in the same direction, the shorter being included in the longer distance, on either of said routes or lines, is unlawful under the fourth section of the act to regulate commerce.

336. Two of the south branch lines of said railway company are crossed by the main line of the Chicago, Milwaukee and St. Paul Railway Company. From points on these branch lines the North-Western Company comes in competition with the St. Paul Company, from its main-line points. *Held*, That the charges on these branches do not establish a standard of reasonable rates for like distances from points on the north branch of the same company, where no such competition exists.

337. Said railway company had in force from Nebraska points to Turner, Ill., a tariff sheet directing corn destined to the seaboard to be billed from such Nebraska points to Turner at different rates when destined to different seaboard points. The corn was carried from Nebraska to Chicago, where the rebilling and transferring were done. No shipments could be made under this tariff from Iowa points. *Held*, That as billed, the shipment was to Turner; that by billing at different rates to Turner an illegal preference was given, and that Iowa grain growers were subjected to unreasonable disadvantage in marketing corn.

The Imperial Coal Company and Andrews, Hitchcock & Company *v.* The Pittsburgh and Lake Erie Railroad Company, and The New York, Lake Erie and Western Railroad Company, as lessee of the New York, Pennsylvania and Ohio Railroad. (2 I. C. C. Rep., 618.)

338. A group rate for a particular district upon a commodity for which a large demand exists, and intended to place producers in the district upon an equality among themselves and with producers of the same commodity from other districts, all competing in a common market, is not unlawful merely on account of differences in the geographical location of different producers and their respective distances from the market.

339. Actual undue prejudice or damage of which the rate is the cause must result to the more favorably situated producers to render a group rate unlawful.

340. In determining the question of undue prejudice from a rate distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, extent and nature of the competition in the business itself and by other transportation lines, and the interests of the public in the use of the commodity and its market cost, are to be considered.

341. A rate of 90 cents a ton on coal shipped to Lake Erie for a district covering a radius of 40 miles around Pittsburg, Pa., embracing a large number of mines of substantially like cost of production and like character of coal, has prevailed since the act to regulate commerce took effect. The coal from the different mines is in competition at Lake Erie, and is transported over several different and competing lines of railroad, all carrying at the same rate. The coal from the district is also in competition with similar coal from the Hocking Valley district, in Ohio, and from other districts. The complainants' mines are near the center of the district, and some mines in competition with them are at a greater distance from the lake, varying from 20 miles to 43 miles. On all the facts of the case, *held* that, the rate in itself not being unreasonable, it does not appear that it subjects the complainants to undue prejudice or that it gives an unreasonable preference to the more distant mines.

342. The question of a greater charge in the aggregate for a shorter than for a longer distance over the same line in the same direction is not to be determined by the proportion allotted to different roads on the line, but by the rate as an entirety.

In the matter of Joint Water and Rail Lines. (2 I. C. C. Rep., 645.)

343. The act to regulate commerce does not empower the Commission to compel railroad companies to enter into joint arrangements with carriers by water for through carriage at through rates.

344. The fact that a railroad company makes such joint arrangements for one of its branch roads will not charge it with unjust discrimination for refusing to make identical arrangements on other parts of its system when it appears that from such other parts of its system it actually makes through arrangements by a more direct route and at the same rates which are presumptive of equal convenience to shippers.

In the matter of Passenger Tariffs. (2 I. C. C. Rep., 649.)

345. Methods generally adopted by carriers in the preparation and publication of rate sheets, if in substantial compliance with the law, and sufficient for the purposes of public information, while not necessarily to be accepted by the Commission as a standard, may be acquiesced in until a better mode can be substituted.

346. When there is no joint rate in effect from a station on the line of one carrier to a station on another carrier's line to which a ticket is applied for, it is competent to name a through rate made up of the sums of rates prevailing on the several roads or parts of roads made use of in the journey; using for such a through rate local rates where there are no joint rates in effect and joint rates in combination with locals where they are in effect for any part of the distance. When no joint rates are announced it is understood that the local rates are employed in arriving at the through rate.

347. New individual or joint passenger tariffs must be posted at stations to which they apply, and tickets can legally be sold on combinations of initial or terminal locals therewith.

348. Mileage, excursion, or commutation passenger tickets must be offered impartially to all who accept the conditions on which they are issued, and the rates at which they are sold must be published. The general requirements of the act to regulate commerce as amended are as applicable to these classes of tickets as to any others.

349. Party rates and passenger carload rates lower than contemporaneous rates for single passengers constitute discrimination between persons entitled to transportation at equal rates, and are therefore illegal.

The Little Rock and Memphis Railroad Company *v.* The East Tennessee, Virginia and Georgia Railroad Company, and The St. Louis, Iron Mountain and Southern Railway Company. (3 I. C. C. Rep., 1.)

350. English legislation and the procedure thereunder, in respect to applications by carriers to be admitted to through routes and to participate in through rates, stated; and principles then applied explained.

351. The act to regulate commerce was probably intended to effect similar results, but in its present form and in the absence of the necessary machinery it is not adequate to afford the relief prayed in the petition.

352. Recommendations of Second Annual Report for amendment of section 3 renewed. Kentucky and Indiana Bridge Company *v.* Louisville and Nashville Railroad Company (2 I. C. C. Rep., 162), referred to and explained.

In the matter of the Tariffs and Classifications of the Atlanta and West Point Railroad Company and other companies. (3 I. C. C. Rep., 19.)

353. Investigation by the Commission, on its own motion, concerning course pursued by certain carriers in respect to compliance with the provisions of the act to regulate commerce.

354. Results as ascertained stated, and recommendations made for further advances in the direction of conformity to the law.

355. Short-haul clause, principles giving application of as heretofore announced by Commission, and again affirmed and applied.

356. Form of tariffs and classifications in use criticised and requirements of statute stated in respect thereto.

Rice, Robinson and Witherop *v.* The Western New York and Pennsylvania Railroad Company. (3 I. C. C. Rep., 87.)

357. After a case has been decided, a petition to open it for further testimony and a rehearing should be verified, and should indicate the nature of the new testimony and its purpose.

358. When a question of general public interest is involved, the Commission, in its own discretion, and in furtherance of justice, may open a case to give parties the benefit of a more extended investigation of the same subject-matter in other pending cases.

In the matter of the Investigation of the Acts and Doings of the Grand Trunk Railway Company of Canada in the Transportation of Traffic from the United States into Canada. (3 I. C. C. Rep., 89.)

359. The provisions of the act to regulate commerce apply to foreign as well as domestic common carriers engaged in the transportation of passengers or

property, for a continuous carriage or shipment, from a place in the United States to a place in an adjacent foreign country.

360. The common carriers engaged in such transportation are subject to the provisions of the act in respect to the printing of schedules of rates, fares, and charges for the traffic they carry, the posting and filing with the Interstate Commerce Commission of copies of such schedules, the notice of advances and reductions, and the maintenance of the rates, fares, and charges established and published and in force at the time.

361. Such common carriers are also subject to the provisions of the act in respect to joint tariffs of rates, fares, and charges for continuous lines or routes.

362. The carriage of freights can not be prevented from being treated as one continuous carriage from the place of shipment to the place of destination by any means or devices intended to evade any of the provisions of the act.

363. Under the provisions of the act the Grand Trunk Railway of Canada is required to print, post, and file its schedules of rates and charges for the transportation of property from points in the United States to points in Canada, and can not lawfully charge, demand, collect, or receive from any person or persons a greater or less compensation therefor, or for any services in connection therewith, than is specified in such published schedule as may at the time be in force.

364. Upon an investigation by the Commission it appeared that the Grand Trunk Railway Company of Canada transports coal and coke under a schedule specifying a total rate from Buffalo, Black Rock, and Suspension Bridge, in the United States, to Hamilton, Dundas, and several other points in Canada, and that the published tariff rate for such transportation from points named to Hamilton and Dundas is $1 a ton, but that it accepts a reduced charge or allows a rebate of 25 cents a ton in favor of certain consignees at Hamilton, Dundas, and other points in Canada.

365. *Held*, That the reduced charge accepted, or rebate allowed, is in violation of the act to regulate commerce and unlawful.

366. The Interstate Commerce Commission has authority to institute investigations and so deal with violations of the law independently of a formal complaint or of direct damage to a complainant.

William H. Heard *v.* The Georgia Railroad Company. (3 I. C. C. Rep., 111.)

367. It is a lawful duty that a carrier, like the defendant, owes to the traveling public, in carrying out its rule of furnishing separate cars to white and colored passengers on its line engaged in interstate travel, to make them equal in comforts, accommodation, and equipment, without any discrimination.

368. It is a lawful duty which a carrier, like the defendant, owes to the traveling public, engaged in interstate travel over its line, to afford the equal protection of the law alike to all such passengers, without regard to race, color, or sex, against undue prejudice and disadvantage from disorderly conduct on the part of other passengers or persons.

369. On the facts in this proceeding, *held*, that the defendant violated the law in each of the foregoing respects as against petitioner.

Putnam P. Bishop *v.* H. R. Duval, receiver of the Florida Railway and Navigation Company. (3 I. C. C. Rep., 128.)

James A. Harris *v.* H. R. Duval, receiver of the Florida Railway and Navigation Company, and other carriers.

370. When, pending a proceeding begun to test the reasonableness of rates, the rates are reduced and made satisfactory to the complainants, the Commission will not consider the question whether the rates before reduction were or were not excessive; that question having by the reduction made become purely abstract and speculative.

371. The question whether rates paid ought to be refunded having been presented to a judicial tribunal, where it is now pending, the Commission will not take cognizance of it.

Milton L. Myers, survivor of Hostetter & Co., *v.* The Pennsylvania Company, operating the Pittsburgh, Fort Wayne and Chicago Railway; The Baltimore and Ohio Railroad Company; The Lake Shore and Michigan Southern Railway Company; The Pittsburgh and Lake Erie Railroad Company; The New York Central and Hudson River Railroad Company; The Allegheny Valley Railroad Company; and the Pennsylvania Railroad Company. (3 I. C. C. Rep., 130.)

372. A petition to reopen a case that has been decided, and for a rehearing, should show *prima facie* that some material testimony has been overlooked or misapprehended, or some error in the findings of fact or conclusions of law.

373. When the application is insufficient in these respects, and only asks for a rediscussion of the law and facts already considered, with no offer of new evidence that can change the result, the application will be denied.

The New York Produce Exchange *v.* The New York Central and Hudson River Railroad Company; The Michigan Central Railroad Company; The Lake Shore and Michigan Southern Railway Company; The Chicago and Grand Trunk Railway Company; The Great Western Railway Company of Canada; The New York, Lake Erie and Western Railroad Company; The Chicago and Atlantic Railway Company; The New York, Pennsylvania and Ohio Railroad Company; The New York, Chicago and St. Louis Railroad Company; The West Shore Railroad Company; The Delaware, Lackawanna and Western Railroad Company; The Grand Trunk Railway Company of Canada; The Pittsburgh, Fort Wayne and Chicago Railway Company; The Pennsylvania Railroad Company; The Pittsburgh, Cincinnati and St. Louis Railway Company; The Wabash Western Railway Company; The Baltimore and Ohio Railroad Company; The Philadelphia and Reading Railroad Company, and the Central Railroad Company of New Jersey. (3 I. C. C. Rep., 137.)

374. From November 4, 1887, to February 20, 1888, the Trunk Lines, so called, under resolutions of their association, made through export rates of which the inland proportion accepted by them was, at the port of New York, often 10 cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same port. *Held*, That the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for the same inland carriage is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port.

375. It is essential that any method for making rates should be practicable, and not afford a cover for discrimination and injustice. The only practicable mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates.

376. Under the amendments of March 2, 1889, to the statute requiring ten days' previous notice of advances and three days' previous notice of reductions in rates, they can not be varied from day to day, or oftener, to meet fluctuations in ocean rates.

377. Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by addition of the ocean rate from time to time prevailing or how otherwise.

J. P. Sanger *v.* The Southern Pacific Company, lessee of the Central Pacific Railroad, and the Union Pacific Railway Company. (3 I. C. C. Rep., 134.)

378. A misapprehension under which a party has paid for one journey in two sections, whereby the cost of the transportation has been made more than it would have been had a through ticket been purchased, may lawfully be corrected by return of the excess, though the carriers were without fault and only charged for each portion of the journey the regular rates.

George Rice *v.* The Cincinnati, Washington and Baltimore Railroad Company, The Cincinnati, Indianapolis, St. Louis and Chicago Railway Company, The Chicago, Rock Island and Pacific Railway Company, the Union Pacific Railway Company, and The Central Pacific Railroad Company. (3 I. C. C. Rep., 186.)

George Rice *v.* The Cincinnati, Washington and Baltimore Railroad Company, The Ohio and Mississippi Railway Company, The St. Louis and San Francisco Railway Company, The Atchison, Topeka and Santa Fe Railroad Company, The Atlantic and Pacific Railroad Company, and The Southern Pacific Company.

George Rice *v.* The Louisville and Nashville Railroad Company.

In the matter of the Application of the Petitioner for Subpœnas *duces tecum*.

379. In laying down rules upon the subject of what an application shall contain for the compulsory production of books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, the Commission is governed by the provisions of the act to regulate commerce and the objects and purposes of this statute, but in connection with these will also consider the practice in the courts of the United States, as well as the rules prescribed by Federal statutes in proceedings which seem to be most

nearly analogous to proceedings in which such application to the Commission is made.

380. In proceedings between parties, when such an application is made to the Commission, to compel parties who are not engaged as carriers in interstate commerce, or others who are strangers to the proceeding, to produce books, papers, and documents, the application should be in writing, addressed to the Commission, and should specify, as nearly as may be, the books, papers, or documents for the production of which process is desired, and be accompanied by an affidavit that the books, papers, or documents described are in the possession of the witness or under his control, and should set forth facts which make a *prima facie* case that these contain evidence that is material and necessary to the party seeking their production in the pending proceeding; and in such a case the *prima facie* showing that what is required to be produced will be legal evidence for the party demanding it ought to be very clear and full.

381. Where the application is made to compel one who is a party to the proceeding and who is a carrier engaged in interstate commerce to produce its books for the purposes of evidence in a pending proceeding, it is sufficient for the application to indicate in writing in a general way what books of the carrier should be produced, and that there is reason to believe, and that the applicant does believe, that in the course of the hearing they will become of service, on account of the light they will throw upon the questions in controversy in the proceeding and as an evidence of good faith; in making the application, the applicant should make an affidavit, as part of the application, that such application is made in good faith, and not for the purpose of vexing and harassing the defendant; and upon such a showing, as a general rule, the process should issue, unless the number of books called for should be so large, or from other exceptional circumstances the Commission should order the testimony to be taken at such place as would avoid oppression in producing the books at a far-distant hearing, and expedite the progress of the investigation.

382. The difference that exists in what should be a *prima facie* showing for compulsory process for the production of books, papers, and documents as between parties not engaged as carriers in interstate commerce, or strangers to the proceeding, on the one hand, and, on the other hand, carriers who are engaged in interstate commerce, is the one that is very manifest. The books of carriers engaged in interstate commerce, whether made up from shipping tickets, waybills, expense bills, or otherwise, are supposed to give the exact particulars of the consignment, showing the weight, rate, and amount of charges to be paid to the company's agent, and are put in this enduring form at the time of the consignment as part of the transaction upon rates that the law requires to be open and public, and thus they give a history of the details of the transaction and are in the nature of semipublic records. Shippers, consignees, and even the public may well have an interest, under certain circumstances, in the evidence these records afford as to rates, charges, facilities furnished, and the general movement of freight. The books of strangers to the proceeding, and of parties not engaged as carriers in interstate commerce, do not necessarily occupy any such relation to these transactions, though there may possibly be such a showing as would make them material and competent evidence in proceedings in which these transactions come into controversy.

383. There are several modes of procedure by which the inconvenience to the defendant carriers of producing books, and the delay and labor of going over their entries, might be avoided by petitioner. For example: If one or more witnesses should be subpœnaed from the different companies proceeded against, and a notice should be served with the subpœna, requiring the witnesses to furnish the published rates and tariffs of such company, for a specified period, and also requiring them to furnish statements of the actual charges made and car facilities furnished during such period, to the Standard Oil Trust and the others named in the application, if different from the published tariffs and schedules, it would probably be sufficient for all the purposes of these proceedings; or if the parties would take depositions by consent in advance of the hearing it would answer the same purpose.

384. In proceedings like these it is enough to show the rates actually charged, if there are or have been any such, to certain shippers or consignees different from the published tariff rates, or the preferential facilities, if any such, furnished by the defendants to some shippers or consignees and not to others, or the comparative rates on the different commodities named in the complaints, and from and to designated points. Innumerable shipments, with all their minuteness of detail over the various lines that were made for many years before the act to regulate commerce took effect, as well as since that

date, and the names of the consignors and consignees at so many different points through these long periods of time, seem to be immaterial. It appears to be sufficient for all the purposes of these cases to show the rates published, the rates actually charged, and the facilities furnished from and to designated points since the act to regulate commerce went into effect, and for whatever light these may throw upon the question of the reasonableness and justness of the rates, if any, and the fairness of the facilities afforded by way of comparison; what these were for a reasonable time, for example, for a period of twelve months before the act to regulate commerce went into effect.

385. The books of the defendant carriers, as to rates charged, facilities furnished, and general movements of freight, being in the nature of semipublic records, to any extent that they can fairly and justly save time, labor, or expense to complainant, or to their companies, by giving to him, in response to any calls he may make, statements of facts shown by their books, records, or files which may probably have importance on the hearing, the officers and agents of the defendant carriers, under the direction of defendants, ought to give such statements, and ought to do so as promptly as may be found reasonably practicable. Much unnecessary controversy, inconvenience, and delay might well be avoided in the first instance, as well as in subsequent stages of proceedings, if carriers would exhibit, without technical objection, what their books show in reference to a transaction in question to anyone who calls for the information in good faith, believing, though perhaps erroneously, that it is, or may be, important to his interests, and when the application is seasonably and properly made, with a due regard for the convenience of the carriers' agents and officers; and the instances are numerous in which it would put an end to the controversy, and in many others that the party would not then trouble the carrier for the production of the books.

386. As the application in these cases does not conform to the rules herein stated in reference to making a *prima facie* showing for the compulsory production of the books, papers, and documents, either as against the defendant carriers or those who are strangers to these proceedings, the relief it seeks can not now be granted, and for the present must be denied; but this does not preclude the petitioner from renewing his application, provided, in doing so, he conforms to the rules indicated.

The Lincoln Board of Trade *v.* The Union Pacific Railway Company and The Southern Pacific Company, and five other cases. (3 I. C. C. Rep., 221.)

387. The relief claimed having been conceded, no opinion of the Commission is filed.

The Pennsylvania Company, operating the Jeffersonville, Madison and Indianapolis Railroad, *v.* The Louisville, New Albany and Chicago Railway Company. (3 I. C. C. Rep., 223.)

The Chicago, St. Louis and Pittsburg Railroad Company *v.* The Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

388. The Commission does not give opinions on abstract questions.

389. Where a case involving the reasonableness of rates has been disposed of by the carrier assenting to the rates demanded, no opinion will be expressed on the rates which have been abandoned, even though the parties request it.

390. Such a course is particularly advisable and proper when it is apparent that other parties than the one complained of are interested in the question, and have not had the opportunity to be heard upon it.

Henry McMorran and Edmund B. Harrington *v.* The Grand Trunk Railway Company of Canada and the Chicago and Grand Trunk Railway Company. (3 I. C. C. Rep., 252.)

391. Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions of a joint through rate over the same line; mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges.

392. When rates on the line of a carrier are on their face disproportionate or relatively unequal, the burden is on the carrier to justify them when challenged.

393. Grain and grain products classified alike are presumptively entitled to equal rates, and if a difference is made by a carrier it assumes the burden of sustaining it by satisfactory evidence.

394. Upon complaint against the Grand Trunk Railway of Canada for alleged unreasonablenes of a rate of 8 cents a hundred pounds on grain and 10

cents a hundred pounds on grain products from Port Huron to Buffalo, as compared with a through rate of 15 cents a hundred pounds from Chicago to Buffalo over the line formed by that road and the Chicago and Grand Trunk road, *held*, that though the local rate from Port Huron to Buffalo might be regarded as disproportionate on the basis of distance alone, other considerations are involved, and in view of the terminal and ferry expenses at Port Huron, the Niagara Bridge charges, and the Buffalo terminal expenses, all of which are borne by the Grand Trunk Railway of Canada alone upon business originating at Port Huron, the complaint against the 8-cent rate on grain is not sustained; but no good reason having been shown for a higher rate on grain products, that portion of the complaint is sustained, and the products ordered to be carried at the same rate as grain.

Abiel Leonard *v.* The Chicago and Alton Railroad Company, and Logan B. Chappelle *v.* The Same Company. (3 I. C. C. Rep., 241.)

395. A practice had existed on the part of certain carriers of live cattle to make a carload rate irrespective of weight, leaving the shipper to load into the car as many cattle as he pleased and was able to put into it. The carriers substituted for this practice the rule that while naming a car-lot rate they prescribed a minimum weight for a carload, and then charged by the hundred pounds in proportion to the car-lot rate for any excess over the minimum. *Held*, That this rule was not unlawful.

396. *Prima facie* the new rule is more just and reasonable than the practice it supplanted, since the charge is more in proportion to the service rendered.

397. The fact that some difficulties are found to exist in the prompt and accurate weighing of the cattle is not a reason for abolishing the new practice, but rather for improving and perfecting it.

398. The fact that by the action of certain State commissions a car is permitted to be loaded by the shipper at discretion without the car-lot rate being affected thereby is not a reason for adopting the like rule in interstate traffic if that course is found not to be most just and politic.

399. The grant to the Federal Government of the power to regulate interstate commerce is full and complete, and can not be narrowed or encroached upon by State authority, either directly or indirectly. The fact, therefore that one or more States have adopted a particular regulation is not a reason for applying it to interstate commerce if in itself it appears to be objectionable. State action will always be treated with the highest deference and respect, but can not be allowed to control in matters within the Federal jurisdiction.

James & Abbott *v.* The East Tennessee, Virginia and Georgia Railway Company, The Norfolk and Western Railroad Company, The Shenandoah Valley Railroad Company, The Cumberland Valley Railroad Company, the Pennsylvania Railroad Company, The New York, New Haven and Hartford Railroad Company, and the New York and New England Railway Company. (3 I. C. C. Rep., 225.)

400. The presence of combined rail and water competition at a longer-distance point does not justify a greater charge for a shorter distance while the carrier maintains the shorter-distance rate where such competition is of greater force and more controlling than at the longer-distance point.

401. Nor does the fact that the freight is lumber, which has paid a local rate over the roads of the defendants or of other railroad companies to the longer-distance point, justify such greater charge for a shorter distance.

402. Nor is such greater charge justified by the fact that the lumber business of the roads of a connecting line or any of them was done in cars which carried machinery to the longer-distance point when profitable return loads were not always to be had.

403. Nor does a difference in the bulk and value of lumber justify such greater charge when the carriers in their published rate sheets put the lumber in the same class and at the same rate.

404. Distance is not always the controlling element in determining what is a reasonable rate, but there is ordinarily no better measure of railroad service in carrying goods than the distance they are carried.

405. And where the rate of freight charges over one line, on similar freight carried from neighboring territory to the same market, is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive and should be reduced.

The Oregon Short Line Railway Company *v.* The Northern Pacific Railroad Company. (3 I. C. C. Rep., 264.)

406. Under the Rules of Practice issued by this Commission a replication to an answer is not required or allowed.

William L. Rawson *v.* The Newport News and Mississippi Valley Company, The Baltimore and Ohio Railroad Company, and L. Boyer's Sons. (3 I. C. C. Rep., 266.)

407. Where a tariff complained of was abandoned by the carriers for a long period of time before the complaint was made and shortly after the tariff was put in force, the Commission will not make an order requiring the carriers to cease and desist from enforcing such tariff, because such an order would be vain and useless.

408. The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at the time no reparation can be awarded, and the remedy of the petitioner is in the courts.

Frederick A. White *v.* The Michigan Central Railroad Company and the Lake Shore and Michigan Southern Railway Company. (3 I. C. C. Rep., 281.)

409. When a complaint charged that the respondent railroad companies, which were common carriers subject to the act to regulate commerce, were accustomed to make deductions of from 5 to 10 pounds of wheat per load from the true weight when delivered by the farmer to the buyer at the elevators of the respondents, and gave receipt to the farmer for the amount as thus diminished, upon which the latter was paid by the buyer, thereby suffering a loss to the extent of such reduction, but failed to charge that the wheat was delivered for interstate transportation, or, indeed, for transportation anywhere, it was *held* that the complaint was insufficient in substance to show violation of the act to regulate commerce, and that the respondents were entitled to have it dismissed on their motion to that effect, but that the dismissal should be without prejudice.

410. An averment that the respondents were interstate common carriers subject to the act to regulate commerce was not of itself sufficient to warrant an inference, under a motion to dismiss a complaint for insufficiency, that wheat delivered at an elevator of the respondents was for interstate commerce.

411. This case was heard solely upon the respondent's motions to dismiss the complaint for insufficiency of its allegations to show violations of the act to regulate commerce, but the complainant having filed some depositions taken before the hearing of said motions, the Commission looked into this evidence with a view of seeing what light it shed upon the general claim of unlawful practice by the respondents, and upon the duty of the Commission to proceed against them on its own motion.

Hervey Bates and H. Bates, jr., *v.* The Pennsylvania Railroad Company and The Pennsylvania Company. (3 I. C. C. Rep., 435.)

412. The defense of water competition from Chicago and the lake shipping points to seaboard points east as a justification for an otherwise unjustifiable discrimination in rate between corn and its direct products from Indianapolis to said seaboard points was held to be untenable, owing to the situation of Indianapolis as to the lakes and to the location of the territory where the corn was mainly raised that was marketed at Indianapolis, and to the other facts established in this case.

413. Where an existing classification and rate are not shown to operate injuriously to the carriers from a given point or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon a continuation of the previous classification and rate first established and long maintained by the carriers themselves, without complaint from any quarter. Such change in classification and rate would subject the persons engaged in the industry and the locality and the particular traffic to unreasonable disadvantage within the prohibition of section 3 of the act to regulate commerce.

414. A discrimination between the rate on corn and its direct products from a given locality resulting from a reduction of the rate on corn below the rate on its direct products, which subjected persons in that locality engaged in the business of manufacturing corn into its direct products, and of selling the same, to unreasonable prejudice or disadvantage, and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic. *Held* to be in violation of section 3 of the act to regulate commerce, notwithstanding the new rate on corn was open to all persons equally and with equal service.

415. When carriers other than the respondents of record are committing the same violations of the act to regulate commerce as the respondents, an order may issue against the respondents and the cause be held for the purpose of bringing such other carriers into it to be proceeded against unless they comply with the order.

The Chicago, Rock Island and Pacific Railway Company *v.* The Chicago and Alton Railroad Company. (3 I. C. C. Rep., 450.)

416. Where property is to be transported by rail by continuous and uninterrupted carriage from one station to another, there may be sound and legal reasons for making a charge for the through transportation which is less than the sum of the locals for the transportation of like property from point to point between such stations.

417. But where property is billed from one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be reloaded for further carriage will depend upon the volition of the shipper or of anyone who may have become purchaser, the case does not fall within the reasons governing rates on through transportation, and the carrier is not, at such intermediate points, entitled to have the carriage protected as a through shipment as against competitors.

The Pittsburgh, Cincinnati and St. Louis Railway Company *v.* The Baltimore and Ohio Railroad Company. (3 I. C. C. Rep., 465.)

418. Passenger excursion rates are required to be published according to the provisions of section 6 of the act to regulate commerce.

419. Party-rate tickets are not commutation tickets, and when party rates are lower than contemporaneous rates for single passengers they constitute discrimination and are illegal.

F. B. Thurber, M. N. Day, E. A. Doty, H. K. Miller, W. B. Timms, B. F. Shores, committee of the New York Board of Trade and Transportation, *v.* The New York Central and Hudson River Railroad Company, the New York, Lake Erie and Western Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Pennsylvania Railroad Company, and the Baltimore and Ohio Railroad Company. (3 I. C. C. Rep., 473.)

Thomas L. Greene, as manager of the Merchants' Freight Bureau and as representing two hundred and eighty-one retail merchants in six different States, *v.* The Same Defendants.

Francis H. Leggett & Co. *v.* The Same Defendants.

420. Classification of freight for transportation purposes is in terms recognized by the act to regulate commerce, and is therefore lawful. It is also a valuable convenience both to shippers and carriers.

421. A classification of freight designating different classes for carload quantities for transportation at a lower rate in carloads than in less than carloads is not in contravention of the act to regulate commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar, and may justify a reasonable difference in rate. The public interests are subserved by carload classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities.

422. Carriers are not at liberty to classify property as a basis of transportation rates and impose charges for its carriage with exclusive regard to their own interests, but they must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice which the act prescribes.

423. Cost of service is an important element in fixing transportation charges and entitled to fair consideration, but is not alone controlling nor so applied in practice by carriers, and the value of the service to the property carried is an essential factor to be recognized in connection with other considerations. The public interests are not to be subordinated to those of carriers, and require proper regard for the value of the service in the apportionment of all charges upon traffic.

424. A difference in rates upon carloads and less than carloads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which, under existing conditions of trade, furnish a large volume of business to carriers, is unjust and violates the provisions and principles of the act.

425. A difference in rate for a solid carload of one kind of freight from one consignor to one consignee, and a carload quantity from the same point of shipment to the same destination consisting of like freight or freight of like character from more than one consignor to one consignee, or from one consignor to more than one consignee, is not justified by the difference in cost of handling.

426. Under the official classification, the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between carloads and less than carloads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary, and is so ordered.

George D. Sidman *v.* The Richmond and Danville Railroad Company. (3 I. C. C. Rep., 512.)

427. The respondent issued commutation tickets for a stated number of trips within a specified time, subject to several conditions, one of which was that the purchaser should have no claim for rebate on account of nonuse of the ticket from any cause; another, that it be presented to the conductor for cancellation of each trip when taken. A commuter had to pay the conductor full fare if he did not have his ticket, but in such cases the respondent had fallen into the habit of refunding the same on presentation of the ticket for cancellation of the trip at the proper office of the company. About three weeks prior to the complainant's purchase of his ticket, the respondent had discontinued this habit and had given notice to that effect in a new tariff sheet filed with the Interstate Commerce Commission and posted in the stations of the railroad as required by law on a change of tariff rates. *Held*, That it was not an unlawful discrimination to refuse to refund to the complainant who held such ticket, but had forgotten to take it on a certain trip and had paid his fare, notwithstanding he supposed the former custom was in vogue when he purchased his ticket.

428. It was a regulation of the respondent company, published on its public tariff schedules filed and posted as required by the act to regulate commerce, that the conductor should collect fare on trains from passengers without tickets by adding 25 cents to single-trip rates. *Held*, That it was not unjust discrimination against the complainant to exact this addition from him.

429. The complainant purchased what the respondent termed a quarterly commutation ticket on the 13th day of June, specifying the number of trips that might be taken thereon as 180, but it provided that the term should expire on the 31st day of the following August, and this was known to the complainant when he made the purchase. It was similarly stated on each one of such quarterly tickets when it was to expire, viz, at the end of the third calendar month after it was issued. *Held*, That the complainant was not entitled to recover any portion of the purchase price for the thirteen days less than a full quarter.

D. S. Alford *v.* The Chicago, Rock Island and Pacific Railway Company. (3 I. C. C. Rep., 519.)

430. In the absence of statutory provision the rights of a railroad company under a lawful agreement for a specified use of the tracks of another railroad company are measured in respect to the track use by the terms of the contract, and the provisions of the act to regulate commerce apply to the situation created by the contract and add no authority for a different use of the tracks.

431. The duty of a railroad company operating its own road or a road that it controls to serve the local stations on its line does not apply to a company that has only a running privilege for through trains to reach points on its own line over a part of the road of another company which it does not control. In such a case the company is not required to disregard the conditions of its agreement, and does not violate the provisions of the act to regulate commerce by not receiving and discharging traffic on the tracks of the proprietary company, the sufficiency of the local service rendered by the latter not being questioned.

432. The Union Pacific Railway Company entered into a contract with the Rock Island Railway Company by which, for a valuable consideration, the latter company acquired the right to run its through trains from and to points on its own road over the road of the Union Pacific Company between Kansas City and Topeka upon the condition that no intermediate business should be done by the Rock Island Company on any part of the line used under the agreement, the Union Pacific Company retaining control of the road and of its operation, and supplying transportation accommodations for the intermediate points between Kansas City and Topeka. Upon complaint made against the Rock Island Company by a resident of Lawrence, one of the intermediate towns, for refusing to perform the ordinary duties of a common carrier in receiving and discharging traffic at his town, *held*, that the duties of the Rock Island Company were limited by its rights and powers under its contract and that it was not bound to do the local business prohibited by the agreement on the line used by its through trains.

The New Orleans Cotton Exchange *v.* The Illinois Central Railroad Company, The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company, The Terre Haute and Indianapolis Railroad Company, The Pennsylvania Company, The Pennsylvania Railroad Company, The Indianapolis and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, The Ohio, Indiana and Western Railway Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, The Chicago and Grand Trunk Railway Company, The Central Vermont Railroad Company, The Cheshire Railroad Company, The Chicago and Atlantic Railway Company, The New York, Pennsylvania and Ohio Railroad Company, and the New York, Lake Erie and Western Railroad Company. (3I. C. C. Rep., 534.)

The New Orleans Cotton Exchange *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railway Company, The New Orleans and Northeastern Railroad Company, The Vicksburg and Meridian Railroad Company, The Vicksburg, Shreveport and Pacific Railroad Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Cincinnati, Washington and Baltimore Railroad Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company.

433. When questions involve the reasonableness of rates upon the transportation of cotton from the Southern States by all-rail lines to Northern and Eastern mills and Atlantic ports upon through rates and a long haul on the one hand, and, on the other, the local rates of rail carriers to a near port upon a short haul at which their service terminates, they having no associated line of steamships for a continuous carriage to ultimate destination, but the cotton so carried by them to such near port being chiefly for export, and all such rail lines penetrating the same territory and competing for the same business, running north, south, and east in opposite directions, such questions can only be disposed of on broad lines and not from narrow considerations.

434. In considering such questions thus presented, the circumstances and conditions surrounding the traffic in the respective services performed in its carriage by the rail carriers may be, and in these proceedings are, found to be substantially dissimilar and wholly unlike.

435. The proportion of one carrier in a through rate upon a long haul often is and frequently well may be considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference, or extortion involved in such a method.

436. The active competition of all these rail carriers for the transportation of such freight, thereby giving them the benefit of a participation in it and lowering the rates for the benefit of the producer and consumer, and furnishing many outlets to markets, is one of the results contemplated by the act to regulate commerce, and which it was intended to promote.

437. In determining such questions, a comparison of rates based upon the doctrine that the rate per ton per mile for each of the different services so performed should be the same is not applicable, citing former decisions of the Commission upon this subject.

438. In solving questions of this character the Commission will look at and consider every fact, circumstance, and condition surrounding the traffic and of the service performed in its transportation, and if the competition of water carriers at any point is such as to be large, active, and of controlling force, the all-rail lines competing for the traffic at the same point may make rates that are reasonable and just in view of such competition, and which will enable them to participate in the carriage of the traffic, and are not obliged to go out of the business and leave it as a monopoly to water carriers.

439. The method of compressing cotton for shipment from the Southern States is one that is found to be absolutely necessary in the case of long through hauls by rail, or where the cotton is carried by coastwise steamers or by ocean vessels for export, and the difference in the rate of transportation of compressed and uncompressed cotton by rail carriers should be the actual and necessary cost of compressing.

440. Upon the facts found in these cases, the Commission will not order the rail carriers to transport cotton on flat cars instead of in box cars to New Orleans, the rate being the same on each, no injury being shown to have resulted to petitioners, or to that city, or to any shipper or producer from the carriage in box cars.

441. The Commission, by adjustment, corrects the rates at Meridian and Jackson, Miss., on compressed and uncompressed cotton carried to New Orleans, respectively, over the lines of the Cincinnati, New Orleans and Texas Pacific Railway and the Illinois Central Railroad; and holds that the complaint

as to the relative reasonableness of rates at other stations on the Illinois Central Railroad in Mississippi and Tennessee to New Orleans is not sustained.

The Worcester Excursion Car Company *v.* The Pennsylvania Railroad Company. (3 I. C. C. Rep., 577.)

442. Where a railroad company has by an arrangement with one car company procured a sufficient supply of sleeping and excursion cars for all the business of its lines, and refuses to haul excursion cars of other private car companies over its track for this reason, it can not be forced to do so against its objection.

443. Unless the contrary is imposed as conditions in the grant of its charter, the right to construct and operate a railroad is a franchise in its nature exclusive, not held in common with the public, though the grant of the franchise is for the public use; and the tracks of a railroad are not a common highway upon which anyone can enter and use his own cars for transportation purposes against the objection of the company owning the tracks.

444. The extraordinary liability imposed by law upon a railroad company as a common carrier for the sufficiency and safety of its passenger cars and the competency of its employés in operating such cars is a highly important protection to the public, but such company might very reasonably claim that it was not responsible for a passenger car of a private car company, or the consequences of that passenger car being transported as part of its train in causing a wreck, collision, or delay, when it had no volition in accepting or rejecting such car, but was forced to transport it by order of a civil tribunal.

445. A railroad company may acquire cars by construction, by purchase, or by contract for their use, and no one has the power to compel a railroad company to select among these several modes, or to contract with all comers.

446. The interest of the public in a matter of this kind is vitally important and lies in the direction of holding every common carrier by rail to the strictest responsibility in furnishing safe, suitable, and sufficient car equipment for the transportation of persons over its line; and the lawmaking power in enacting the act to regulate commerce has not undertaken to divide this responsibility with the carrier in the selection of its cars.

447. It would be directly at war with the rights and safety of the traveling public, as well as of the railroad company, if the line of the carrier should become an arena over which it should be compelled to make a contract of some sort with every car company or inventor of cars, and transport the public in trains of which such cars were part.

Bennet D. Mattingly *v.* The Pennsylvania Company. (3 I. C. C. Rep., 592.)

448. The provisions of the act to regulate commerce, construed in the light of the principles that apply to interstate commerce as enunciated by the courts of the United States, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agents and instrumentalities employed and the commodities carried, with only the limitations found in the act itself.

449. The proviso in the first section that the provisions of the act shall not apply to the transportation of passengers or property, as to the receiving, delivery, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid; that is, by continuous carriage or shipment, only excludes from regulation the purely internal commerce of a State—that which is confined within its limits, which originates and ends in the same State.

450. When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.

451. The national regulations prescribed are not in all respects coextensive with the power of Congress, and do not provide for ordering through routes and through rates. While it is the duty of a State carrier which engages in interstate commerce to forward traffic offered from a connecting line, there is no authority under the present act to compel the carrier to forward the traffic over a route not operated or selected by itself.

Mary O. Stone and Thomas Carten *v.* The Detroit, Grand Haven and Milwaukee Railway Company. (3 I. C. C. Rep., 613.)

452. Where a common carrier subject to the act to regulate commerce has established and published its schedule of rates and charges for a station on its

line, free cartage furnished by the carrier for the collection and delivery of freight carried on its road to or from such station operates as a reduction or rebate from the schedule charge and is unlawful. If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater.

453. It is not material to the question of the lawfulness of free cartage furnished at one town and not at another that the business was done in that way for many years before the act to regulate commerce was enacted. If what was done and is now done works unjust discrimination or is in any particular obnoxious to the law it is an abuse, and one that it must be assumed was intended to be corrected by the act.

454. The respondent company had a tariff schedule in effect grouping the rates from eastern points at Ionia and Grand Rapids, in Michigan, Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia.

455. Upon complaint by a firm of dealers at Ionia, *held*, that the free cartage at Grand Rapids was in effect a rebate and unlawful.

In the matter of the application of F. W. Clark, general freight and passenger agent of the Seaboard Air Line. (3 I. C. C. Rep., 649.)

456. Through rates in interstate traffic are the subject of agreement among carriers who transport the freight, and for their existence are dependent upon such agreement; and one of the features of such rates usually is that each carrier receiving the freight pays the charges upon it of the carrier delivering it.

457. Where a line of steamships, for example, plying between New York and Wilmington, N. C., make through rate from New York via Wilmington and the Carolina Central Railroad to interior points, by adding the steamer rate to the local tariff rate of the railroad to the interior points, there being no agreed through rates for such freight between the steamship and rail lines, the rail carrier, when the freight is tendered to it at Wilmington, is under no obligation to pay the rates earned by the steamer in transporting the freight from New York to Wilmington, but may decline to do so, leaving the steamship and the shipper to settle the matter of the steamship's charges before the carrier takes the freight and transports it to the interior point.

Charles Elvey, claimant, *v.* The Illinois Central Railroad Company, defendant. (3 I. C. C. Rep., 652.)

458. Where a carrier by its published general tariffs charges the general public from and to all points upon a large portion of its lines certain rates upon a class of freight, and at the same time publishes and puts into force a special tariff by which it charges a class of persons named, from and to the same points on its lines less than one-half in amount of the rates on the same class of freight that it charges the general public in its general tariffs, such a discrimination is unjust and is violative of the act to regulate commerce,

459. Such a discrimination can not be sustained upon the ground that the special tariff is made to aid "emigrants" in moving from one State to another where land is cheap, and to develop a sparsely settled country, and to build up business along the carrier's lines, and upon the supposition that this constitutes substantially dissimilar circumstances and conditions to what exists when similar services are rendered by the carrier for the general public.

460. A shipper to whom, as an emigrant, is accorded the rate provided by the special tariff, for example, $60 on a carload of freight weighing 20,000 pounds, from Chicago, Ill., to Hammond, La., a distance of 863 miles, in December, 1888, and in May, 1889, makes return shipment of same freight from Hammond, La., to Chicago, Ill., under the general tariffs of the carrier, there being no other tariffs on north-bound freight between these points, and is charged therefor $122 per car, complains of an unjust charge, *held*, that as the carrier in each instance charged only its open published rates, and no evidence is offered to show that the rates in either instance are unjust and unreasonable, and as the general tariffs of the company have long been in use and published and open to the public, and the special tariff has been but recently issued and is open to a certain special class only and is unlawful, that the general tariffs afford a better standard of what are reasonable and just rates than the special tariff, and that the shipper in such case has not been injured in paying less than one-half the amount charged the general public on the first haul and only what was charged the general public on the second haul.

461. The carrier is ordered and notified to cease and desist from further operating the special freight tariff.

J. B. Pankey *v.* The Richmond and Danville Railroad Company and others. (3 I. C. C. Rep , 658.)

462. When a shipper of freight gives directions to the freight agent of the initial carrier at the point of shipment the particular route by which the freight shall be shipped to destination, it is the duty of the freight agent to make such notations on the waybill as will reasonably and properly carry the freight by such particular route to destination.

463. A shipper at Troup, Tex., directs the freight agent of a carrier to bill his freight from that point to Fort Lawn, S. C., via Vicksburg, Jackson, Meridian, Birmingham, Atlanta, Augusta, and Columbia. The freight agent simply inserts in the waybill that the destination of the freight is Fort Lawn, S. C., "via Vicksburg," in consequence of which the freight at Vicksburg is billed to Atlanta and consigned to the Richmond and Danville Railroad Company, by which it is carried to Fort Lawn without being carried by way of Augusta and Columbia, and as a result of this the shipper is compelled to pay 86 cents more for the carriage than if it had been billed via Augusta as directed by the shipper, the rates by all rail lines from Vicksburg to Augusta being the same, and not the same from Vicksburg to Fort Lawn via Atlanta. *Held*, That in this the freight agent failed to do his duty; he should have made a notation on the waybill via Vicksburg and Augusta; and, upon request, the initial carrier should refund to the shipper the amount of this overcharge occasioned by the oversight of its freight agent.

464. If, on the other hand, the shipper at Troup, Tex., had given the freight agent no directions whatever as to the particular route by which the freight was to be sent forward to its destination at Fort Lawn, S. C., but had simply left it to the freight agent to select the route for him, as is frequently done by shippers in such cases, then, in that event, in selecting such route for the shipper, it would have been the duty of the freight agent to have forwarded the freight by the best and cheapest route for the shipper, so far as the freight agent knew or was informed, and to have made such notations on the waybill as would reasonably have carried it by that route, for in doing that service he would have been acting as the agent of the shipper as well as of the company.

Hulbert H. Warner *v.* The New York Central and Hudson River Railroad Company; The West Shore Railroad Company; The New York, Lake Erie and Western Railroad Company; The Delaware, Lackawanna and Western Railroad Company; The New York, Ontario and Western Railway Company; The Pennsylvania Railroad Company; The Baltimore and Ohio Railroad Company; The Philadelphia and Reading Railroad Company; The Lehigh Valley Railroad Company; and The Grand Trunk Railway Company of Canada, as members of the "Trunk Line Association." (4 I. C. C. Rep., 32.)

465. In arranging the classification of articles of commerce, their market value and the shippers' representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they justly belong. This is especially applicable to articles in which there is no free competition among producers and shippers. And carriers are not required to estimate the intrinsic value of freight as distinguished from its commercial value for purposes of classification and rates.

466. The volume of traffic supplied by an article for transportation is also an element that may be considered in its classification as a basis for rates that are reasonable both for carriers and shippers.

467. Patent medicines manufactured and shipped by the complainant are rated in the official classification as first class for less than carloads and third class for carloads. Ale, beer, and mineral water are rated as third class in less than carloads and fifth class in carloads. The market value of the medicines is three times or more higher than that of the other articles named, and the quantity transported much less. Upon complaint made that the patent medicines should be classified the same as ale, beer, and mineral water, *held*, that in view of the much higher market value of the medicines and the smaller volume of traffic they supply, a higher classification than for the other articles named, in which there is a much greater competition among shippers, is not unreasonable, and the classification at present in force is not shown to be unjust.

Lehmann, Higginson & Co. *v.* The Southern Pacific Company; The Texas and Pacific Railway Company; The Missouri, Kansas and Texas Railway Company, and H. C. Cross and George A. Eddy, receivers of said company. (4 I. C. C. Rep., 1.)

Lehmann, Higginson & Co. *v.* The Southern Pacific Company; The Atlantic and Pacific Railroad Company; and The Atchison, Topeka and Santa Fé Railroad Company.

Lehmann, Higginson & Co. *v.* The Central Pacific Railroad Company; The Southern Pacific Company, lessee of The Central Pacific Railroad; The Union Pacific Railway Company; The Missouri, Kansas and Texas Railway Company, and H. C. Cross and George A. Eddy, receivers of said company.

468. A lower charge for a longer distance for transportation of like traffic may be justified by actual water competition of controlling force, relating to traffic important in amount; and among the circumstances and conditions that may be considered in estimating the dissimilarity created by water competition are the character of the roads, the character of the traffic, the preponderance of empty cars moving in a direction in which the traffic must be taken, and the legitimacy of the competition by the rail carrier.

469. The transportation of traffic under circumstances and conditions that force a low rate for its carriage or an abandonment of the business, but which affords some revenue above the cost of its movement, and works no material injustice to other patrons of a carrier, is to be deemed legitimate competition. When, however, its carriage is at a loss, and imposes a burden on like traffic at other points, and on other traffic, it is to be deemed destructive and illegitimate competition.

470. Rates can not be arbitrarily charged in the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carriers. Reduced rates at points where competitive influences are controlling must not fall below some revenue from the traffic in excess of cost, and higher rates at other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rate.

471. The general rule contemplated by the statute, of equitably graduated charges on like traffic with reasonable reference to the amount of the service, is just in itself, and commonly most beneficial both to the carriers and to the public; and is only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require.

472. Where a reduced rate is made at the terminus of a through route, under the compulsion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route is not unjust discrimination.

473. Upon complaint by dealers at Humboldt, Kans., against the respondent lines for unjust discrimination in charging a rate of 65 cents per 100 pounds on sugar transported from San Francisco to Kansas City, and 85 cents per 100 pounds upon the same commodity from San Francisco to Humboldt, more than 100 miles shorter distance, but not on the through line. *Held*, That the reduced rate to Kansas City being forced upon the carriers by competitive conditions beyond their control, and the rate to Humboldt not being unreasonable in itself, but lower than it would be except for the influence of the competitive conditions at Kansas City, and it not appearing that substantial injustice results from the higher rate at Humboldt, the lower rate to Kansas City and the higher rate to Humboldt are not deemed to be in contravention of the statute.

The Andrews Soap Company *v.* The Pittsburg, Cincinnati and St. Louis Railway Company; The Cincinnati, Hamilton and Dayton Railroad Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; The Cincinnati, Washington and Baltimore Railroad Company; The Chesapeake and Ohio Railway Company; The Ohio and Mississippi Railway Company, and The New York, Pennsylvania and Ohio Railroad Company. (4 I. C. C. Rep., 41.)

474. A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value.

475. Upon complaint by a manufacturer of soap, advertised and sold as toilet soap, charging unjust discrimination by classifying his product in the second class with other toilet soaps, and not in the fourth class with laundry soaps,

as he claims it should be classed, for the reason that his toilet soap is not substantially superior to soap put on the market by certain other manufacturers as laundry soap, which, under that description, is transported at a lower rate. *Held*, That the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly, and carriers are not required to classify and transport it as laundry soap.

In the matter of Alleged Excessive Freight Rates and Charges on Food Products. (4 I. C. C. Rep., 48.)

476. The rate of compensation which railroad companies may lawfully receive for transportation services can not be so limited that the shipper may in all cases realize actual cost of production.

477. Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic.

478. In the carriage of great staples, which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable.

479. Transportation charges now made on corn and oats between the Mississippi River and Eastern cities, based on 20 cents per 100 pounds from Chicago and 23 cents from East St. Louis to New York City, are less than 4.4 mills per ton per mile, and are not excessive.

480. The charge of 20 cents on the 100 pounds of corn and oats from the Missouri River to Chicago, and 5 cents less to the Mississippi River, is excessive, and to be reasonable should not exceed 17 cents to Chicago and 12 to the Mississippi River, east side.

481. The rates on corn and oats in force from stations in Kansas and Nebraska to the Mississippi River, east side, and to Chicago, are 2 cents in excess of reasonable rates.

482. Any transportation charges between the Mississippi River and New York City on wheat and flour based on a higher rate than 23 cents per 100 pounds from Chicago to New York City are unreasonable, and any rate on wheat and flour carried from any one place to another which is more than 15 per cent above the rate on corn and oats between the same places is unreasonabe.

483. The rates of 46 cents per 100 pounds on grain and 51 cents on flour and meal between the grain region in Kansas and a large district in Texas are the same for distances shorter than 250 and longer than 800 miles, and are unreasonably high for the longer and grossly excessive and extortionate for the shorter distances.

484. In fixing reasonable rates, the requirements of operating expenses, bonded debt, fixed charges, and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is the obligations must be actual and in good faith.

In the matter of Alleged Excessive Freight Rates and Charges on Food Products. (Opinion on protest and motions to dismiss.) (4 I. C. C. Rep., 116.)

485. The act to regulate commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the act which require rates and charges to be reasonable. In the performance of this duty the Commission has authority to inquire into the management of the business of common carriers and to require the attendance and testimony of witnesses, the production of books and papers, tariffs, and contracts relating to any matter under investigation. To enforce its authority in this respect the Commission must invoke the aid of a court of the United States.

486. When applied to by petition the Commission must investigate matters complained of, and must, to enforce the act, make investigations and prosecute inquiries instituted on its own motion. On making any investigation, the Commission is required to make a report in writing of its recommendations, conclusions, and the finding of fact on which its conclusions are based, which recommendations and conclusions, if not complied with, can only be enforced through the courts, after trial, in accordance with established procedure. In such trial the facts found by the Commission, in conformity with the statute, have legal effect and are *prima facie* evidence; but the recommendations, conclusions, and orders of the Commission are of no binding force in the courts.

487. The Commission having entered upon inquiry and investigation as to the reasonableness of transportation rates on food products, and given notice of the time and place of taking testimony, and afforded opportunity for calling and cross-examination of witnesses. *Held*, That such proceeding was a substantial compliance with the statute.

The Manufacturers' and Jobbers' Union of Mankato, Minn., *v.* The Minneapolis and St. Louis Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Kankakee and Seneca Railroad Company, and The Burlington, Cedar Rapids and Northern Railway Company. (4 I. C. C. Rep., 79.)

488. Transportation charges are required to be relatively reasonable as well as reasonable in themselves, to prevent unjust discrimination between localities. A locality not widely dissimilar in situation and in respect of the transportation service of the same carrier to other localities where lower rates are given, is entitled to rates that bear a just relation to the lower charges made.

489. Equality in charges is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity.

490. When a carrier engages in transportation for which, by reason of competitive conditions or for purposes of its own, it receives low rates from some patrons and at some localities, it accepts the legal obligation to give impartial service to other patrons and at other localities that sustain similar relations to the traffic.

491. The generally recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance, is not a rule required by the statute, and is subject to qualifications and exceptions.

492. Upon complaint by dealers at Mankato, Minn., that rates from Chicago to Mankato should be no higher than to Waterville, Minneapolis, and points allowed like rates, *held*, that in view of the circumstances and conditions existing, a somewhat higher charge to Mankato is not unlawful, but that a difference of 20 per cent or more on the respective classes, charged when the complaint was filed, is excessive, and that a difference of 10 per cent on the several classes is reasonable and should not be exceeded.

Proctor & Gamble *v.* The Cincinnati, Hamilton and Dayton Railroad Company, The Pittsburg, Cincinnati and St. Louis Railway Company, and The Pennsylvania Railroad Company. Proctor & Gamble *v.* The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, and The New York Central and Hudson River Railroad Company. Proctor & Gamble *v.* Orland Smith and H. C. Yergason, receivers of the Cincinnati, Washington and Baltimore Railroad Company, and The Baltimore and Ohio Railroad Company. (4 I. C. C. Rep., 87.)

493. The complainants are large manufacturers of common soap at Cincinnati, Ohio. In the official classification common soap stands in the fifth class in carload lots. The defendant railroad companies have always given it the rate of fifth-class articles, but for many years prior to May, 1889, they charged the complainants for only net weight, the gross weight being one-sixth more than net weight, but since said date they have charged for gross weight without diminishing the rate per 100 pounds. The effect of this was to charge one-sixth more for the same service than had before been charged. The charge for transportation under the net-weight practice was reasonable and just, and without complaint on the part of shippers or carriers. *Held*, That the increased charge by the device of charging for the gross weight, being one-sixth advance for the same service, was unwarranted, as it operated to make the rate unreasonable.

The San Bernardino Board of Trade *v.* The Atchison, Topeka and Santa Fe Railroad Company, The Atlantic and Pacific Railroad Company, The Burlington and Missouri River Railroad Company, The California Central Railway Company, The California Southern Railroad Company, The Chicago, Kansas and Nebraska Railway Company, The Missouri Pacific Railway Company, and The St. Louis and San Francisco Railway Company. (4 I. C. C. Rep., 104.)

494. Where complaint alleges that a greater charge, in the aggregate, for the transportation of a like kind of property, is made for shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another. *Held*, Complaint is sufficient to put the carriers on proof that the services were rendered under such dissimilar circumstances as to justify the greater charge.

495. The water competition which will justify a greater charge for a shorter distance by railroads must be actual. Possible competition will not justify such greater charge under the provisions of the fourth section of the act to regulate commerce.

496. The filing of schedules of rates with the Commission as required by statute raises no presumption as to the legality of such rates, and no omission or failure to challenge or disapprove the schedules of rates so filed can have the effect of making rates lawful which are unreasonable.

Rice, Robinson & Witherop *v.* The Western New York and Pennsylvania Railroad Company. (4 I. C. C. Rep., 131.)

497. The acquisition and consolidation by a rail carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets can not create a right on the part of the carrier to take advantage of the consolidation of interests to deprive the public of the benefits of fair competiton nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rates and charges for one division that give profitable markets to a portion of its patrons, and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business; but its duty to the public requires that its service must be alike to all who are situated alike.

498. A carrier that employs different methods for the transportation of petroleum oil and its products, in carloads—for example, tank cars, in which the oil is carried in bulk, and box cars, in which the oil is carried in barrels—is not relieved from its duty in respect to quality of rates by the difference it makes between its patrons in the mode of carriage, but its charges for like quantities carried between like points of shipment and destination must be equal upon the commodity itself, irrespective of the mode of carriage or the tank or barrel package in which it is contained. Differences in circumstance, and conditions of transportation that are of a carrier's own creation or connivance, or that by reasonable effort on the part of a carrier might be avoided, can not justify exceptional rates.

499. A tank used in carrying oil is deemed by carriers part of the car and the rate is charged only upon the contents, while for carriage in box cars the barrels containing the oil are treated as freight and the rate is charged both for the weight of the barrel and its contents. The prevention of this prejudice to shippers in barrels requires that for purposes of rates, when a carrier uses both tank and box cars for carrying oil in carloads, the barrels shall be deemed part of the box car; and that, as in the case of transportation in tanks, the rate shall be charged only for the weight or quantity of oil carried, exclusive of the weight of the barrels, and be the same for like weight or quantity carried in tanks.

500. When a carrier engages in transporting oil in tanks and also in barrels conveyed in box cars, in carloads, and charges for the weight of the barrel as well as the oil carried by the box-car mode of transportation, but for the weight of the oil only when carried in tanks, it unjustly discriminates between shippers, and subjects the traffic to undue projudice and disadvantages.

501. The fact that a carrier does not own tank cars, but accepts and uses such cars supplied by some of its patrons for their own traffic, is unimportant so far as rates are concerned. It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment can not be transferred to nor required of shippers. When a carrier accepts and uses cars for transportation owned by shippers or others, in legal contemplation it adopts them as its own for purposes of rates and carriage, and neither the manner of acquiring cars, nor inability to furnish its general patrons the use of cars similar to those furnished by some shippers for their own traffic, can excuse or justify a carrier for discrimination in rates that may give one shipper advantages over another; nor can any device, such as payment of unreasonable rent for use of cars furnished by shippers, be practiced to evade the duty of equal charges for equal service.

502. The allowance by a carrier to a shipper of oil in tanks, of 42 gallons, or any number of gallons, from the actual quantity put in a tank, for alleged leakage or waste in transportation, is, in the absence of a corresponding allowance to shippers in barrels, unjust discrimination and unlawful.

503. The classification of petroleum oil and its products in carloads adopted and

generally applied by carriers is the same, and the rates upon oil and its products should correspond with their classification and be alike.

The Board of Trade of the City of Chicago, complainant, *v.* The Chicago and Alton Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, Santa Fé and California Railway Company, The Illinois Central Railroad Company, John McNulta, receiver of the Wabash Railway Company, and the Chicago and Northwestern Railway Company, defendants; and, as interveners, the Armour Packing Company, George Fowler & Sons, Kingan & Co. (Limited), Jacob Dold Packing Company, Morrison Packing Company, Allcut Packing Company, Kansas City Packing Company, Des Moines Packing Company, William Ellsworth, Haakinson & Co., James E. Booge & Sons, Silberhorn & Co., McKeown & Sons, L. B. Doud & Co., Brittain & Co., John Morrell & Co. (limited), T. M. Sinclair & Co., William Ryan & Sons, Coey & Co., and the honorable Board of Railroad Commissioners of the State of Iowa. (4 I. C. C. Rep., 158.)

504. Certain propositions of fact established by the evidence in this proceeding may be briefly stated as showing the character of the case and also on account of the light they throw upon the conclusions reached by the Commission.

The city of Chicago is the largest pork-packing center in the country, and is also the most extensive market for live hogs and all other live stock.

Kansas City, Leavenworth, St. Joseph, Atchison, Omaha, Council Bluffs, Sioux City, Sioux Falls, Des Moines, Dubuque, Burlington, Cedar Rapids, Marshalltown, Fort Dodge, Keokuk, Grinnell, Ottumwa, and many other points that might be named in the interior of Iowa, are extensive pork-packing centers, and the hog products packed at these cities are brought into direct competition with the hog products packed at Chicago, not only in the markets of the United States, but also in all other markets of the world where hog products are consumed.

As articles of commerce the live hog and its products are in direct competition with each other at the points named and in the chief markets of this country.

From Sioux City to Mississippi River points, and from Sioux City to Eastern markets and seaboard cities via Mississippi River points, the rates are made considerably higher by the carriers on live hogs than on packing-house product. With, however, the single exception of Sioux City, rates are made the same by rail carriers on live hogs and packing-house product carried from Missouri River points to Mississippi River points, or from Missouri River points to Eastern markets and seaboard cities via Mississippi River points, or from intermediate points in the States of Iowa and Missouri to Mississippi River points, or from intermediate points in Iowa and Missouri to Eastern markets and seaboard cities via Mississippi River points, or from Chicago to Eastern markets and seaboard cities and intermediate points. But upon all shipments of live hogs and packing-house product from Missouri River points to the city of Chicago, or from intermediate points in the States of Iowa and Missouri to Chicago, the rate charged is much higher on live hogs than on packing-house products.

505. The foregoing propositions of fact being true, the defendants and intervenors undertook to justify the discrimination made against Chicago upon various grounds, which, with the view of the Commission upon each, may be briefly stated.

They claim that trains carrying live hogs had the right of way over other freight trains and were run at a higher rate of speed on account of reaching the market at Chicago. But the evidence adduced did not show that this was of a nature and character that warranted the discrimination made in rates against Chicago. They also claim that there was much greater risk to the carrier in hauling live hogs than in transporting packing-house product. But the evidence showed that there was no appreciable difference in the risk of carrying the one as compared with the other.

They further claim that it is more expensive to the carrier to haul live hogs than packing-house products to Chicago. But the evidence did not sustain this ground of defense.

They claim, and the evidence showed it to be true, that the lines of railway east of the Mississippi River and east of Chicago used double-deck cars for transporting live hogs, while the railway lines west of Chicago and between Missouri River points and Mississippi River points and Chicago, with the exception of the Chicago, Milwaukee and St. Paul Railway Company and the Atchison, Topeka and Santa Fé Railway Company, used single-deck cars, and that the two exceptional roads last named had but few double-deck cars.

But this was found to constitute no justification for this discrimination in rates against Chicago.

They claim that, counting coal, cooperage, salt, and ice used in packing-house work, live hogs brought in, and packing-house product carried out, the slaughtering of hogs at the packing houses at Missouri River points and in the interior of Iowa and Missouri furnished the rail carriers more tonnage than if the live hogs were transported to Chicago and converted into packing-house product there. But this was not found to warrant the discrimination in rates made against Chicago.

By some it was insisted that as the rate on the live hogs from Missouri River points and from points in the interior of the State of Iowa, for example, to the packing house at Sioux City, added to the rate on packing-house product from the packing house at Sioux City to Chicago, is but a trifle more than the rate on the live hogs from the first point of shipment above named to Chicago, that this equalized the rates relatively on live hogs and hog product. But the Commission finds that there is no element of justice or fairness in making or computing rates upon any such basis as this, and that it constitutes no ground whatever for these discriminating rates against Chicago.

The intervenors insist that there is a considerable shrinkage of the live hogs in being transported in cars long distances, and further claim that the meat is in better condition when converted into product near where the hogs are reared and fresh than if this is done after the hogs are transported a long distance, and that therefore public considerations demand that the live hogs should be converted into product near where they are grown. But the Commission finds that while there is a temporary shrinkage of from 3 to 5 per cent in the weight of a hog from Missouri River points and interior points in the States of Iowa and Missouri in a haul to Chicago, yet that the transportation business of the country has demonstrated that live hogs may, as articles of commerce, be transported great distances without any material injury or loss in value, and that neither these considerations, separately nor both combined, upon the evidence adduced, furnish any ground for these discriminating rates against Chicago.

The intervenors also defend these discriminating rates against Chicago on the ground of immense investments of capital that have been made in the establishment of packing houses at Missouri River points and in the interior of Iowa and Missouri on the faith of these rates, which give employment to a large number of persons; that the business in these States has adjusted itself to this condition of affairs, and that now to make the changes in these rates claimed by petitioner would break up and ruin these packing houses. But upon the evidence the Commission is unable to find that the preferential rates given to these large establishments in Iowa and Missouri and at Missouri River points as well as in other portions of the country are reasonable and just when compared with the heavy discriminations laid upon the packers and buyers of Chicago.

506. A business like that involving the preparation for consumption of such a large and leading staple and necessary of life as meat, with all the competion that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicuous instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves, but relatively reasonable and just in their bearing upon these different localities.

The Poughkeepsie Iron Company, complainant, *v.* The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company, and The Connecticut River Railroad Company, defendants. (4 I. C. C. Rep., 195.)

507. Pig iron is one of the lowest classes of freight, and the rates on that article complained of in this proceeding are not found to be unjust and unreasonable, either in themselves or relatively as charged petitioner compared with rates from Youngstown and Cleveland, Ohio.

508. Rates charged petitioner by the defendants on pig iron are in themselves, as well as relatively, the same in substance as rates charged other manufacturers of pig iron at the producing furnaces in the State of New York.

509. Through rates on long hauls more usually than local rates on short hauls encounter water competition and are made lower in proportion to distance by this cause as well as other causes which have been repeatedly discussed and considered by the Commission; and the doctrine contended for by petitioner in this proceeding, that an estimated proportion of the through rate must not be less according to distance than the local rate from an intermediate point to another point named in the line covered by the through rate,

has often been held by the Commission to be untenable. (See Detroit Board of Trade *et al. v.* The Grand Trunk Railway Company and others, 2 Inters. Com. Rep., 202; 2 I. C. C. Rep., 320. New Orleans Cotton Exchange *v.* The Illinois Central Company *et al.*, 2 Inters. Com. Rep., 777; 3 I. C. C. Rep., 534.)

510. The cost of the production of pig iron at a furnace situated, like that of petitioner, on the Hudson River, in the State of New York, is much greater than at Youngstown, Ohio, or Birmingham, Ala., or at other points in the West and South; and while the aggregate rate charged petitioner to New England mills is a great deal lower than the aggregate rate charged on these Western and Southern irons to the same mills, yet it is not sufficiently so to overcome the difference in the cost of production; and the consequence is that petitioner finds itself at a serious disadvantage in competing with these Western and Southern irons in the markets and mills of the New England States, where there is a very great demand for this class of property.

511. The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties and in which such localities sought to be burdened with higher rates, for example, Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves, as well as relatively, just and reasonable rates, demonstrate that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston and Albany road one-half, and to Holyoke nearly one-half, in order to overcome the difference in the cost of production of pig iron now existing against petitioner.

The Harvard Company, complainant, *v.* The Pennsylvania Company, The Pennsylvania Railroad Company, The Lake Shore and Michigan Southern Railroad Company, The New York Central and Hudson River Railroad Company, The Baltimore and Ohio Railroad Company, The Grand Trunk Railway Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, The Valley Railway Company, the New York, Lake Erie and Western Railroad Company, The Boston and Albany Railroad Company, The New York and New England Railroad Company, and the New York, New Haven and Hartford Railroad Company, defendants. (4 I. C. C. Rep., 212.)

512. Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk, and expense of handling and of carriage would to a considerable extent enter; and for the purposes of such comparison it is not indispensably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring to view the fact of discrimination in rates, if there be such.

513. The valuable service performed to the transportation interests of the country by rate and classification committees. Rules recognized by the Commission in making of classifications and rates.

514. The mere fact that one article is of more general use and therefore shipped in greater quantities than another, when each as a rule is shipped in less than carload quantities, and of no considerable difference in bulk, weight, and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. In such a case mere quantity, not measured by any recognized unit of quantity adapted to carriage, and lessening the expense of handling and carriage, can not be allowed to affect rates in the transportation of property.

515. Surgical chairs compared with other freight and reasons stated as to what the rates on them should be as articles of commerce in course of transportation.

George Rice *v.* The Atchison, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, The Alabama Great Southern Railroad Company, The Alabama and Vicksburg Railway Company, The Central Pacific Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Illinois Central Railroad Company, The International and Great Northern Railroad Company, The Louisville, New Orleans and Texas Railway Company, The Mobile and Ohio Railroad Company, The Newport News and Mississippi Valley Company, The New Orleans and Northeastern Railroad Company, The Southern Pacific Com-

pany, The St. Louis, Iron Mountain and Southern Railway Company, The Texas and Pacific Railway Company, and the Union Pacific Railway Company. (4 I. C. C. Rep., 228.)

516. Competition as a factor in making rates: (*a*) The competition between all-water lines and the all-rail lines in the carriage of petroleum and its products from the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, and San Diego, in the State of California, is actual and involves the transportation of traffic important in amount. (*b*) The competition lines between the part-rail and part-water lines and the part-pipe lines and the part-water lines on the one side from the oil fields of Pennsylvania and Ohio via the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, San Diego, and Los Angeles, in California, in the carriage of petroleum and its products, on the one hand, and the competition of the all-rail lines on the other, in the carriage of the same kinds of property from and to the same points named, is a competition that is actual and involves the transportation of traffic important in amount. *Held*, On these facts and upon the authority of numerous decisions cited in this opinion, a dissimilarity of circumstances and conditions is thus shown to exist at the California points named as compared to the circumstances and conditions which exist in the carriage of this traffic by the all-rail lines, at intermediate points along such all-rail lines, and that it is such a dissimilarity of circumstances and conditions as is recognized by the act to regulate commerce, and warrants the all-rail lines in making such just and reasonable rates as will enable them to meet the low rates and competition of the competing all-water lines and of the competing part-water and part-rail lines at said California points above named, and that in doing so the said all-rail lines are not obliged to make their rates at intermediate points along their lines as low as the rates forced upon them by the competition at said California points above named, viz, San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles, and San Diego.

517. The "blanket rate," as it is called, by which the same rate is charged by the all-rail lines from the city of New York, and from all points in the oil-producing regions in the States of Pennsylvania, Ohio, and West Virginia, and from all the territory in the United States east of the ninety-seventh meridian of longitude, in the carriage of petroleum and its products to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles, and San Diego, in the State of California, is a rate that has its origin in and is based upon actual competition for the carriage of this large traffic, on the one side, by the all-rail lines, and on the other side, by the lines part rail and part water, and also, in some instances, all-water lines, and also, in other instances, part-pipe lines and part-water lines; and it is a rate of which petitioner has no right to complain as being a violation of the fourth section of the act to regulate commerce, because it does not appear from the evidence that it is a violation of that section.

518. The other issue upon which this case was tried, namely, that an unlawful preference was shown to the Standard Oil Trust and the companies, firms, and associations affiliated to the said Standard Oil Trust by the all-rail carriers in making low rates for them and for their benefit to certain California points where there were receiving-tank stations erected by the said Standard Oil Trust and its affiliated companies, firms, and associations, and then by shipment afterwards from said receiving-tank stations to adjacent localities on low rates made for short local hauls in California, whereby an unlawful preference was shown to said trust and its affiliated firms, companies, and associations, is not sustained by the evidence in this proceeding.

519. No question is presented in this case as to whether the rates charged by the all-rail carriers at intermediate points are just and reasonable or not, but, on the contrary, the case was so presented and tried as to distinctly indicate to the Commission that no decision was desired in regard to this matter, for no evidence was offered concerning it by either side; and the case being one that is *inter partes* commenced, prosecuted, and defended by able counsel for the respective parties, the Commission has heard, considered, and determined it as presented by the parties and their counsel.

520. It appears that the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railroad Company each has several stations on their lines at which no publication is made in their tariffs of the rates at these stations; and this they admit; and the Commission finds that this conduct on their part has been owing to a misapprehension and misconstruction of the law, and in accordance with a usage and practice long existing among railroads; the Commission therefore orders them to make publication of the rates they

charge at these stations in their tariffs; and in all other respects, as to these defendants and the Union Pacific Railway Company, the petition in this proceeding stands dismissed.

521. As to the other rail-carrier defendants in this proceeding, which are certain Southern and Southwestern railroads, it appears in a general way that there is water competition at Memphis, Vicksburg, New Orleans, Mobile, and Galveston, but upon this point the evidence is not sufficiently clear to enable the Commission to determine the extent to which this competition at each of these points is actual, and whether it involves traffic important in amount; and the Commission therefore retains the case as to these defendants and will hereafter notify the parties as to the time when and the place where all such further evidence will be heard upon these points that the parties may desire to offer.

W. S. King & Co., complainants, *v.* The New York, New Haven and Hartford Railroad Company and The New York and New England Railroad Company, defendants. (4 I. C. C. Rep., 251.)

522. A line of steamships plying between New York and Boston every other day makes the distance in twenty-four hours, does the largest part of the carrying trade of the grocers of Boston on shipments from New York, carries flour from New York to Boston for 8½ cents per 100 pounds; other lines, part water and part rail, known as the "Sound Lines," make daily trips between New York and Boston, and carry flour from New York to Boston at 9 cents per 100 pounds; an all-rail line composed of the lines of the defendants upon through billing and through rates to Boston alone on shipments from New York makes daily runs between these points and carries flour from New York to Boston at 9 cents per 100 pounds; each and all of these carriers are in actual competition for this business, and it involves the carriage of traffic important in amount. *Held*, Upon the facts, that this is a case in which the circumstances and conditions in the carriage of this commodity are substantially dissimilar at Boston to what they are at Readville, an interior town about 8 miles from Boston, on the line of the all-rail carriers, where no competition exists between the all-rail carriers and the water lines, and justifies the all-rail carriers in meeting the rate by the water line at Boston by charging 9 cents per 100 pounds on flour, while the combined local rates of the two rail carriers are higher upon shipments of this kind of freight from New York to Readville than they are upon the joint through rate from New York to Boston.

523. The all-rail line is composed of two separate and distinct lines of railroad, owned by two separate and distinct corporations; but by an arrangement these two corporations make joint through rates on all business from and to New York and Boston passing over their lines, and for this business they furnish fast freight trains, which stop at no stations between New York and Boston, and have the right of way over all other freight trains; as to all other points along their line, however, they each charge their local rates, and this business is done by way freight trains of each company, respectively, for itself and on its own account; all of which methods and rates in each instance are duly advertised in their published tariffs.

524. On the facts herein above stated, a firm of dealers in the city of Boston ordered a consignment of flour from New York to Readville by the all-rail lines of the defendants in this proceeding, and subsequently claimed in their complaint to the Commission that they should have been charged for this service the through rate to Boston, and not the local rates of the defendants from New York to Readville. *Held*, That the facts show that complainants are mistaken as to their rights in this matter, and that the complaint can not be sustained, and must be dismissed without prejudice.

525. According to the evidence, the cost of service is far less expensive to the carrier in doing the through business than in doing separately, each for itself, the combined local business of the two railroad companies. It does not appear that the through rate to Boston is unreasonably low; nor does it appear upon the evidence in this proceeding that the local rates of these two railroad companies are unjust and unreasonable.

526. The joint through rate to Boston on flour is one that is forced upon the all-rail carriers by the competition of a water line not subject to the act to regulate commerce, and is a rate, low as it is, in which there is a small margin of profit to the all-rail carriers, while the combined local rates to Readville, although considerably higher, relate to a service that is wholly different in all its material features, methods, and aspects, rendered by the carriers under circumstances and conditions that are substantially dissimilar.

527. The evidence fails to sustain the allegation of the complaint that complainants formerly shipped to Readville from New York over the roads of the defendants at Boston rates.

S. C. Capehart and Jasper Smith, owners of the steamer R. T. Coles, complainants, *v.* The Louisville and Nashville Railroad Company, The Memphis and Charleston Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, and the Nashville, Chattanooga and St. Louis Railway Company, defendants. (4 I. C. C. Rep., 265.)

528. Several rail carriers engaged in interstate commerce each cross or touch a navigable river, leaving a large space of territory along and near the river and between their lines that can be served only by steamboats, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river, respectively, but as to it they make through rates with only one line of steamboats, and refuse to make such through rates with other steamboats on the river. *Held*, That under the law the rail carriers may do this, and that it is not unjust discrimination nor unlawful preference. (Citing Napier *v.* The Glasgow and Southwestern Railway Company, 1 Railway and Canal Cases, 292.)

529. In such a case all that a steamboat has a right to demand, with which the rail carriers have refused to make through rates and to do through billing, is that the rail carriers shall receive from and deliver to such steamboat freight for transportation at their published local tariff rates.

530. Through rates and through billing are matters of agreement among carriers engaged in interstate commerce, and, as was decided in the case of The Little Rock and Memphis Railroad Company *v.* The East Tennessee, Virginia and Georgia Railway Company (2 Inters. Com. Rep., 454; 3 I. C. C. Rep., 1), the Commission has no power under the statute to compel them against their consent to enter into arrangements for through rates and for through billing.

531. An aggregate through rate is itself an entirety, although made up of agreed percentages, proportions, or divisions, as the case may be, of the entire rate among the several carriers; and where the rail carrier makes a through rate from a point on a navigable river with a steamboat line, and refuses to make such through rate with another steamboat, the Commission can not compel the rail carrier to receive freight from or deliver it to the steamboat with which it has refused to make a through rate and to do through billing upon the prepayment of charges for an estimated proportion of the through rate equal in amount to that which the rail carrier receives from the steamboat line with which it has an arrangement for through rates and through billing.

532. Where a carrier not subject to the act to regulate commerce—for example, a steamboat plying the Tennessee River between Decatur, Ala., and Bridgeport, in the same State—has applied to rail carriers engaged in interstate commerce for through rates and through billing of freight and has been refused these, and during a period of several years has paid these rail carriers their local published tariff rates on freight, and now sues to recover the difference between the amount so paid on the local rates and the proportion of the through rate between the same points covered by the local rates. *Held*, That no recovery can be had in such a proceeding before the Interstate Commerce Commission, and the complaint is dismissed without prejudice.

533. The common carriers named and referred to in the last clause of section 3 of the act to regulate commerce are such alone as are subject to the provisions of that statute.

James McMillan & Co., complainants, *v.* The Western Classification Committee, defendants. (4 I. C. C. Rep., 276.)

534. Whether a complaint to the Interstate Commerce Commission in regard to classification and rates is formal or informal, it is not enough that it be made against a classification committee or a rate committee concerning grievances alleged to be perpetrated by carriers in the matter of classification and rates who are represented to some extent by such classification or rate committee in making rates, but which carriers are not bound to accept such classification and rates and do not accept them any further than they see proper to do so; in such a case the carriers who, it is alleged, are guilty of perpetrating the grievances should be made the parties defendant to the complaint and the complaint should point them out by name.

535. The Western Classification Committee, in the making of classification and rates, represents about seventy-five railroad companies, but the classification and rates made by this committee are merely recommendatory to the

carriers in the association, and it is not obligatory upon the carriers to accept and operate them. Some of the carriers upon such articles—for example, salted hides and pelts in less than carloads—make commodity rates of their own upon the classification and rates different from those prepared and recommended by the classification committee, while other carriers do not. Upon a complaint by a shipper against the classification committee alone, upon this statement of facts, it is evident that no investigation or order that the Commission could make would have any binding effect whatever upon the carriers.

536. Where all the interstate carriers of the country, working through a committee selected by them for that purpose, are endeavoring to reach a uniform classification of freight, instead of having the various different and conflicting classifications that exist, it being apparent to the Commission that such uniform classification is a result that is greatly in the public interests, as well as in the interest of the carriers, the Commission will not embarrass, delay, or retard the carriers in this work by instituting investigations of its own under the twelfth section of the act to regulate commerce involving the classification of a few enumerated articles, transported from and to an extended area of country, but unless a formal complaint is made against the carriers in regard to such matter and a hearing of it pressed to a determination by the parties, the Commission will wait a reasonable time to see the result of the effort being made by the carriers in their efforts to arrive at a uniform classification.

537. When an informal complaint is made in regard to such a matter, against a classification committee alone, the Commission will, if it can, endeavor to reach some ground that will fairly and justly adjust the differences between the complaining shippers and the carriers; but if it appear that these conflicting differences exist not only between the carriers and the complaining shippers, but that there are other localities and other dealers whose interests are directly involved and who are opposed to the relief sought by the complaining shippers, then the practice of the Commission is not to proceed in any investigation of the complaint until the complaint is put into such shape that such localities and dealers, as well as the carriers complained of, can have an opportunity to be heard.

Hervey Bates and H. Bates, jr., *v.* The Pennsylvania Railroad Company, The Pennvania Company *et al.* (4 I. C. C. Rep., 281.)

538. Upon a rehearing of this case, the additional evidence warrants a finding contrary to what appeared and was found in the original hearing, that the cost to the defendants of transporting the direct products of corn, including terminal expenses properly chargeable as freight charges, between Indianapolis and seaboard points, is greater on the product than on raw corn.

539. Upon the evidence produced at the former hearing it was decided that no reason was shown for a differential rate between corn and the direct products of corn eastward between Indianapolis and the seaboard. The difference in rate complained of was 4½ cents per 100 pounds between Indianapolis and New York, this being the proportion, according to distance, of a 5-cent differential between Chicago and New York. Since the first hearing the defendants have reduced the differential to 2½ cents per 100 pounds. The complainants claimed there should be no difference. The evidence produced at the rehearing satisfied the Commission, upon grounds stated in the opinion, that the former order should be vacated, and that no further order should now be made.

John C. Haddock, complainant, *v.* The Delaware, Lackawanna and Western Railroad Company, defendant. (4 I. C. C. Rep., 296.)

540. Complainant is a miner and shipper of anthracite coal from a region in Pennsylvania from which defendant is a common carrier, and also a miner, purchaser, and shipper of coal on its own account.

541. Complainant alleges that defendant gives to itself as a shipper of coal an undue and unreasonable preference and advantage in rates, as compared with those charged complainant; and further alleges specifically that the rates charged him by defendant on coal east to Hoboken, and west and north to Buffalo and other points, are unreasonable and unjust.

542. Respondent in reply relies on certain contracts between itself and complainant, entered into prior to the enactment of the act to regulate commerce, as controlling the charges for the transportation of coal by the former for the latter, and as precluding the jurisdiction of the Commission in the premises. The substance of one of these contracts is that the price for transporting complainant's coal to Hoboken shall be 50 per cent of the price for which

respondent sells its own coal in Hoboken; the substance of other contracts is that the complainant may ship his coal to points north and west upon the same terms and conditions as respondent for the time being transports coal for other parties, the terms to other parties being fixed in the published tariffs of respondent.

543. No claim is made that the validity of these contracts has been impaired or affected by the passage of the act to regulate commerce, although the Commission distinctly propounded the inquiry whether such claim was made.

544. The case being thus at issue, the complainant applied for subpœnas *duces tecum*, to compel certain third parties, as well as officers of respondent, to produce certain papers and contracts, alleged to be material as evidence upon the issue; and respondent moved to dismiss for want of jurisdiction.

545. The Commission carefully abstains from expressing any opinion as to the effect of the act to regulate commerce in impairing the validity of the contracts referred to, but, assuming them to be still in force, as both parties admit them to be, *Held*, (1) That complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial. (2) The contracts providing that complainant may ship coal to points north and west on the same terms and rates that respondent for the time being gives other persons do not preclude complainant from showing that such rates are unjust, oppressive, or unreasonable. Complainant is therefore entitled to a hearing upon that question. (3) The Commission can not, for the purpose of discovering and preventing unjust discrimination by respondent, which is both a shipper and a carrier of its own products over its own line, compel it to keep separate accounts, showing what it charges itself for transportation or what the cost of transportation to it is; and even were such a separate account required it would form no safe guide in determining whether respondent did or did not use its power as a carrier oppressively. (4) The application for subpœnas *duces tecum* is denied. As applicable to contracts and papers of third persons, not before the Commission, it is denied on the ground of the injustice that might be done such persons; and generally (for the present at least) it is denied on the ground that the material facts can be proven by the testimony of witnesses, without the aid of documentary evidence; although respondent will be expected to produce, for purposes of examination, any books and papers of its own material to the controversy. (5) The respondent's motion to dismiss the complaint *in toto* is denied, as good ground of complaint is set forth in respect to northern and western shipments.

The Kauffman Milling Company *v.* The Missouri Pacific Railway Company, The St. Louis and San Francisco Railway Company, The St. Louis, Arkansas and Texas Railway Company, The Missouri, Kansas and Texas Railway Company, The Atchison, Topeka and Santa Fé Railroad Company, The Austin and Northwestern Railway Company, The Denver, Texas and Fort Worth Railroad Company, The Fort Worth and Rio Grande Railway Company, The Gulf, Colorado and Santa Fé Railway Company, The Houston, East and West Texas Railway Company, The Shreveport and Houston Railway Company, The Houston and Texas Central Railway Company, The Texas Central Railway Company, The International and Great Northern Railroad Company, The Natchitoches Railroad Company, The San Antonio and Aransas Pass Railway Company, The Southern Pacific Company, The Texas and Pacific Railway Company, The Texas, Sabine Valley and Northwestern Railway Company, and the Texas Trunk Railroad Company. (4 I. C. C. Rep., 417.)

546. For reasons peculiar to the territory lying west of the Mississippi River, comprising a large portion of Texas, the State of Missouri, and a considerable part of Kansas, the rates on wheat and wheat flour are grouped without reference to distance, and a lower rate has been charged on wheat than on wheat flour for fifteen years or more. Prior to 1886 the difference in the two rates was 15 cents per 100 pounds or greater. In 1886 a readjustment of rates was made, and upon consideration of all the circumstances and conditions and claims of rival localities the differential was reduced to 5 cents per 100 pounds, which has since been maintained.

547. Upon complaint made by millers of Missouri, supported also by millers of Kansas, against a differential of 5 cents per 100 pounds, and claiming an equal rate on wheat and flour carried from Missouri and Kansas into Texas. *Held*, That under the conditions existing in the territory in question a rate of 5 cents less per 100 pounds on wheat than on flour does not as a matter of fact work unjust discrimination, and is not therefore unlawful.

548. It appearing that the carriers have at times reduced the rate on wheat without a contemporaneous reduction on flour, and so made a larger differential

than 5 cents per 100 pounds, which is sometimes maintained for a considerable period, it is found that a differential exceeding 5 cents per 100 pounds works unjust discrimination, and is unlawful.

549. Reserving any questions that may arise in case a uniform classification shall be established, at present an exception to a general rule of classification or rate making may be justified by adequate considerations in view of dissimilar conditions in different portions of the country, and when a rigid application of a general rule will be injurious to important public interests, an exception is only reasonable.

550. The power to regulate commerce among the States is absolute in Congress, and rates on such commerce may be regulated by Federal authority with reference to trade conditions and circumstances of localities without infringing the rights or immunities of such commerce under the Constitution.

551. The decision in this case applies only to the present situation in the territory in question, and is not intended to lay down a permanent rule for the future nor to apply elsewhere.

Proctor & Gamble *v.* The Cincinnati, Hamilton and Dayton Railroad Company, The Pittsburg, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company. (4 I. C. C. Rep., 443.)

Proctor & Gamble *v.* The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, and The New York Central and Hudson River Railroad Company.

Proctor & Gamble *v.* Orland Smith and H. C. Yergason, Receivers of the Cincinnati, Washington and Baltimore Railroad Company, and The Baltimore and Ohio Railroad Company.

552. A petition or motion for rehearing can not be granted on mere allegation of error in the findings of fact, and such a petition or motion must be supported by proof showing, *prima facie* at least, that there was such error. The affidavits in this case fail to make such showing.

The New York Board of Trade and Transportation, The Commercial Exchange of Philadelphia, and The San Francisco Chamber of Commerce *v.* The Pennsylvania Railroad Company, The Pittsburg, Fort Wayne and Chicago Railway Company, The Pittsburg, Cincinnati and St. Louis Railway Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company, The Lake Shore and Michigan Southern Railway Company, The Chicago and Grand Trunk Railway Company, The New York, Lake Erie and Western Railroad Company, The Chicago and Atlantic Railway Company, The New York, Pennsylvania and Ohio Railroad Company, The New York, Chicago and St. Louis Railroad Company, The West Shore Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Grand Trunk Railway Company of Canada, The Wabash Railroad Company, The Baltimore and Ohio Railroad Company, The Philadelphia and Reading Railroad Company, The Central Railroad Company of New Jersey, The Boston and Maine Railroad Company, The Louisville, New Orleans and Texas Railway Company, The St. Louis, Iron Mountain and Southern Railway Company, The Southern Pacific Company, The Union Pacific Railway Company, The Northern Pacific Railroad Company, The Canadian Pacific Railway Company, The Texas and Pacific Railway Company, The Illinois Central Railroad Company, and The Lehigh Valley Railroad Company. (4 I. C. C. Rep., 447.)

553. The act to regulate commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign port of shipment to a port of entry of the United States and transported from such port of entry to a place within the United States upon a through bill of lading, or when transported from a foreign port to a port of entry of a foreign country adjacent to the United States and transported from such port of entry to a place of destination within the United States upon a through bill of lading.

554. The regulation thus provided is such as regulates the rates, charges, facilities afforded, and treatment of the foreign merchandise from the port of entry in either instance, as the case may be, to the place of destination of the merchandise within the United States, but it is not a regulation that extends to the control of rates made upon such foreign merchandise in the foreign port of shipment for its carriage to the port of entry of the United States or to the port of entry in a foreign country adjacent to the United States.

555. With respect to that part of the carriage of such foreign merchandise between the ports of entry and the place of destination in the United States the rule of the statute is that it is entitled to no preference in rates, charges, facilities afforded, and treatment over domestic merchandise or other merchan-

dise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service it stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded, and treatment, and must be carried upon this part of its journey under the inland tariffs of the carriers established for the transportation of domestic merchandise or other freights, and under the same rules governing their carriage, as to weight, bulk, value, expenses of carriage, and all such other circumstances and conditions as enter into the making of just and reasonable rates and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the statute.

556. The circumstances and conditions surrounding the making of the rates upon such foreign merchandise in the foreign port of shipment have had their weight and operation in its foreign carriage to the port of entry and in the charges made and facilities afforded for that service, but after such foreign merchandise has been brought within the United States on its way to destination in the United States it encounters other circumstances and conditions that are controlling in this part of its carriage, namely, the laws of the United States made for the regulation of its rates and carriage.

557. The publication of such inland joint tariffs for the transportation of such foreign merchandise under the statute, and of advances and reductions, should be made at the port of entry and also at the point of destination of freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry, and where it is delivered at the place of destination in the United States.

558. The term "a like kind of traffic," as it occurs in section 2 of the act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference.

559. Commodity class rates described and discussed.

560. The power of interstate carriers to make commodity class rates and special class rates to meet the circumstances and conditions of traffic along their lines recognized and defined.

Coxe Brothers & Company *v.* The Lehigh Valley Railroad Company. (4 I. C. C. Rep., 535.)

561. Freight classification is deemed by the railroads convenient and essential to any practical system of rate making, and is so recognized, though not enjoined, by the act to regulate commerce.

562. When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the statute, the act requires the Commission to so revise and correct such classification and arrangement as to correct the abuse.

563. Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances.

564. Through transportation over connecting lines is favored by the statute, and the rate over such through lines is correctly adjusted upon the distance through, and not upon the shorter distances over, the several lines.

565. Two roads by agreement carried bituminous coal from the Snow Shoe region in Pennsylvania to Perth Amboy, N. J., a distance of about 300 miles, at a higher aggregate, but lower proportionate, rate than was charged by one road on anthracite for the distance over its line, the distance over such line being about 150 miles. *Held*, That this was no undue preference in favor of the bituminous coal traffic and subjected anthracite traffic to no unreasonable disadvantage, except as the anthracite charges might be excessive.

566. A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company. *Held*, Where such conditions result in violations of the act to regulate commerce the only regulation practicable is the enforcement of the provision of the act requiring rates to be reasonable.

567. It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, and the owners of mines in the Lehigh anthracite region are subjected to no unreasonable disadvantage from the present grouping of mines based on more than actual distance when shipping east and less than actual distance when shipping west.

568. A railroad company had in force for a period of more than two years next before the act to regulate commerce took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron, and other low-grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. *Held*, That such higher rates on coal are unreasonable.

569. The act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty of determining what are reasonable rates, as well as what are unreasonable.

570. A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained; and where a carrier put in force and maintained for nearly two years, immediately after the act to regulate commerce took effect, a scale of charges largely in excess of that maintained for two years next before the act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment. *Held*, The higher rate should be reduced.

The Boston Fruit and Produce Exchange *v.* The New York and New England Railroad Company, The New York, New Haven and Hartford Railroad Company, The Pennsylvania Railroad Company, The Central Railroad Company of New Jersey, and The Lehigh Valley Railroad Company. (4 I. C. C. Rep., 664.)

571. The words "common control, management, or arrangement," as found in the first section of the act to regulate commerce, defined and applied to the special facts of the case.

572. Section 7 of the act may properly be considered in construing the general jurisdictional clause of the first section.

573. Contracts and tariffs filed with the Commission under section 6 of the act may be considered, although not specifically introduced in evidence on the hearing.

574. The Boston Fruit and Produce Exchange is a mercantile society, such as is described in the thirteenth section of the act, and as such has the right to maintain a proceeding like the present without showing special damage to itself.

575. Elements that will be considered in fixing the rates for the transportation of perishable fruit under special circumstances discussed and applied to the facts found.

576. The gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and the fact being so found a reduction is ordered.

Hamilton & Brown *v.* The Chattanooga, Rome and Columbus Railroad Company, The Louisville and Nashville Railroad Company, and The Nashville, Chattanooga and St. Louis Railway Company. (4 I. C. C. Rep., 686.)

577. The rates on freight from interstate points to Kramer, Ga., via the Chattanooga, Rome and Columbus Railroad are made by taking the through rate to recognized "basing points," and adding thereto that local rate which will give the lowest combination. This method of determining a rate criticized, and as applied to such traffic to Kramer, operates as an unjust discrimination against the locality.

578. All the carriers participating in the traffic the rates for which were questioned in this proceeding were not made parties, and the case, while showing that the through rates were discriminatory and unjust, failed to disclose sufficient facts upon which an accurate decision could be based, and accordingly it was held that the carriers who were parties to the proceeding be required to adjust their respective tariffs so as to avoid discrimination against Kramer, and that the carriers who were not parties be summoned to appear and show cause why a like order be not issued as to the business in which they participate, unless their tariffs are voluntarily adjusted so as to avoid the discrimination complained of.

New Orleans Cotton Exchange *v.* Louisville, New Orleans and Texas Railway Company. (4 I. C. C. Rep., 694.)

579. Common carriers are required to post in their depots, stations, and offices schedules showing the rates and charges for transportation in force on the routes of such carriers, as well as on freight which is, as on that which is not, for export.

580. Where a carrier corrects the inequality of rates complained of and thus makes all the reparation asked in the complaint, or that the Commission could afford, no order is required, and none will be issued.

The Delaware State Grange of the Patrons of Husbandry *v.* The New York, Philadelphia and Norfolk Railroad Company; The Delaware Railroad Company; The Philadelphia, Wilmington and Baltimore Railroad Company, and the Pennsylvania Railroad Company. (4 I. C. C. Rep., 588.)

581. For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service, and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just.

582. But the higher rate for a special service should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer if the charges of the carrier have such an effect and can be reasonably reduced.

583. The requirement of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both, and without injustice to the carrier. The public good requires, what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened.

584. The complaint was that the defendants' charges for the transportation of specified perishable articles of truck farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the peninsula in Delaware and Maryland than for the longer distance from Norfolk, Va. It was found that the charges on certain articles specified from stations on the peninsula were excessive and a reduction was ordered. The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration.

John P. Squire & Co. *v.* The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company. (4 I. C. C. Rep., 611.)

585. The provision of the third section of the act to regulate commerce, prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular person, firm, company, corporation, or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets; and when carriers have established rates on articles of competitive traffic which are relatively reasonable and fair, they can not arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the statute.

586 The relation of rates ought to rest upon fixed and stable conditions. The fluctuations of markets are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.

587. Violation by one carrier of principles laid down in this case as governing relative rates on competitive articles does not justify similar violations by its competitors.

588. The rates involved in this case are those on live hogs, live cattle, and the dressed products of each. These are found to be competitive commodities, and therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service.

Jacob Shamberg *v.* The Delaware, Lackawanna and Western Railroad Company and The New York, Chicago and St. Louis Railroad Company. (4 I. C. C. Rep., 630.)

589. A firm of cattle dealers in the city of New York, who procured their cattle on a large scale from Chicago and other Western points for domestic consumption as well as for export, make an arrangement with two interstate rail carriers, constituting a through line from Chicago to New York, that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved live-stock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company three-fourths of a cent per mile, whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a large mileage, and they make more than twice the mileage of ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago, for which no charge is made against the express company or the firm represented by it. In addition to this the carriers pay this firm yardage at the rate of 3½ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm owning the express company, to its yards at Pier 45, East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge is deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expenses of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. *Held:* (1) This is an unlawful preference to the firm owning these improved stock cars and a violation of the act to regulate commerce. (2) It is an unlawful and unjust prejudice to other cattle firms and dealers in New York who are competitors in the business of said firm owning said improved stock cars.

The New York and Northern Railway Company *v.* The New York and New England Railroad Company, The Housatonic Railroad Company, and The New England Terminal Company. (4 I. C. C. Rep., 702.)

590. The respondent, which is a carrier by a railroad running through the State of Connecticut to a point in New York, had had for some time a through billing arrangement and an agreement upon through rates for traffic over its own line destined to New York City, with petitioner's road, which connected therewith at its New York terminus. This arrangement respondent broke up, and declined to enter into any new one in its place.

The reason for breaking up this arrangement was that respondent had entered into a new arrangement with another road connecting with it at a point in Connecticut, whereby a New York City line was formed over which it was intended to take the business which formerly passed over respondent's line to petitioner's. It was not complained that petitioner's road was insolvent or not responsible for its contracts, or that the arrangement as before existing was unfair or unequal as between the parties thereto.

Such action of the respondent is held to be in violation of the second paragraph of section 3 of the act to regulate commerce, which requires that "every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

591. One reason assigned for breaking up the arrangement with petitioner was that respondent was joint owner with the road making the new line of a terminal company for delivery of freight in New York. This interest is not an excuse under the statute for discrimination against petitioner's line, and this whether the interest in the terminal company was large or small. Petitioner did not require or ask the services of the terminal company, but only to be allowed to continue as competitor for the business affected by the discrimination, and to offer its services to the public as such. It is found in the case that the public interest was injuriously affected by the discrimination.

592. It is of no importance to the question involved that after freight carried by petitioner's road reached High Bridge, in New York, its delivery from that point to the pier, which constituted the terminus of the carriage, was

made by an agent or contractor employed for the purpose. Petitioner, being carrier for the whole distance, was entitled to the privileges given by the statute accordingly.

Frederick P. Beaver and William D. Chamberlin, doing business under the firm name of Beaver & Company, *v.* The Pittsburg, Cincinnati and St. Louis Railway Company, The Cincinnati, Hamilton and Dayton Railroad Company, The New York, Lake Erie and Western Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Dayton, Fort Wayne and Chicago Railway Company, The Lake Shore and Michigan Southern Railway Company, The New York Central and Hudson River Railroad Company, The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, The Wabash Railroad Company, The Chicago, St. Paul and Kansas City Railway Company, The Atchison Topeka and Santa Fé Railroad Company, The Missouri Pacific Railway Company, The Chicago, Burlington and Quincy Railroad Company, The Hannibal and St. Joseph Railroad Company, The Union Pacific Railway Company, and The Chicago and Northwestern Railway Company. (4 I. C. C. Rep., 733.)

593. Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.

594. The soaps known as the Ivory Soap and the Grand Pa's Wonder Soap fall within this rule. Both are represented as suitable for laundry and also for toilet purposes, and both are used for those purposes. It would therefore be unjust discrimination to place one of them in a classification as toilet soap and the other in a much lower classification as laundry soap.

The James & Mayer Buggy Company *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company. (4 I. C. C. Rep., 744.)

595. Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided such carriers do not "subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage."

596. The circumstances and conditions which make a greater charge for a shorter distance lawful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points.

597. Water competition to justify the greater charge for the shorter distance must be competition in transportation to the longer distance point, and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation.

598. Goods shipped from Cincinnati, Ohio, to points in the State of Georgia are interstate traffic, and all the roads forming a part of the line over which such goods are carried to their destination are engaged in interstate commerce and are subject to the act to regulate commerce. Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the fourth section of said act by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier.

The Boston Fruit and Produce Exchange *v.* The New York and New England Railroad Company, The New York, New Haven and Hartford Railroad Company, The Pennsylvania Railroad Company, The Central Railroad Company of New Jersey, and The Lehigh Valley Railroad Company. (5 I. C. C. Rep., 1.)

599. At the hearing of this case upon its merits the Commission prescribed the freight rate upon peaches in carload lots from New Jersey and the Delaware Peninsula to Boston, Mass. One of the defendants filed a motion for rehearing, based upon the claim that some of the other defendants construed the decision of the Commission as justifying them in insisting that the freight charge prescribed should be divided among the carriers on a mileage basis merely. *Held,* That the former decision of the Commission could not be fairly construed as justifying the claim that the single freight charge between the interstate points should be divided on a mileage basis merely; that many of the considerations which induced the fixing of an increased rate for the special service were peculiar to the Pennsylvania Railroad Company and in which the other carriers east of the Harlem River did not participate; that, under the pleadings and evidence in this case, the Commission could only prescribe a single rate for the service as an entirety, to be

reasonably and fairly divided among the several carriers by themselves; that the motion for a rehearing be overruled.

Daniel Buchanan *v.* The Northern Pacific Railroad Company. (5 I. C. C. Rep., 7.)

600. The rates on wheat and barley, of 50 and 56 cents per hundredweight, respectively, charged by defendant from Ritzville, Wash., to St. Paul, Minn., a distance of 1,576 miles, in view of the circumstances and conditions surrounding the traffic, held not to be unreasonable.

The Railroad Commission of Florida *v.* The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The North Eastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Pennsylvania Railroad Company, The Florida Central and Peninsular Railroad Company, The Baltimore Steam Packet Company, The New York and Texas Steamship Company, The Clyde Steamship Company, and The Ocean Steamship Company of Savannah. (5 I. C. C. Rep., 13.)

601. The act to regulate commerce makes it the duty of this Commission "to investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission." The complaint in this case was brought by and in the name of the railroad commission of Florida, but the real parties in interest are large classes of growers, buyers, and shippers in the State of Florida. Since the complaint was filed the nominal complainant has ceased to exist. *Held*, That the repeal of the law creating the railroad commission of Florida could not operate as a withdrawal or dismissal of the complaint, that commission having been only an instrument for the transmission of the complaint to this Commission, and having fully performed that function before an end was put to its existence. To abate or dismiss the proceeding on that ground would be to sacrifice substance to form in contravention of the spirit and letter of the act to regulate commerce and of the rules of courts of law in analogous cases. *Held further*, That under the provision of the act to regulate commerce authorizing this Commission to "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made," neither complaint nor complainant is necessary to confer jurisdiction.

602. The defendants, The Clyde Steamship Company, The New York and Texas Steamship Company, and The Florida Central and Peninsular Railroad Company, are common carriers engaged in interstate commerce by arrangement as alleged in the complaint, and as such are subject to the jurisdiction of this Commission in respect thereto.

603. It does not appear that defendants willfully omitted or failed to notify the Commission and the public of the advance in rates complained of, or that anyone has sustained damage or injury by reason of such failure or omission, and therefore there is no case made out for an application by the Commission to a district attorney of the United States for the institution of a prosecution, and no ground for a recommendation of reparation for such injury.

604. While a complainant has no interest in the division the defendants make between themselves, and it does not determine what the charge to the public must be, yet the division is not without significance in determining what are reasonable rates for the whole distance on the lines in question.

605. Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing and the advance is great and the traffic affected is of large and constantly increasing volume and of vital importance to a large section of country.

606. Upon consideration of all the facts and circumstances in this case—*Held*, That the advance of 10 cents per box in rates on oranges from Florida points to New York and other northeastern markets, made by defendants on November 23, 1890, was without justification, and so far as it exceeded 5 cents per box was unreasonable and contrary to law; that defendants be notified and required to make reparation for injuries occasioned by such unreasonable and unlawful rates to the several persons entitled thereto, and as such persons are not parties to this proceeding and the amounts wrongfully received from them, respectively, can not be ascertained from the evidence already taken, that this proceeding be continued for such further action or inquiry in that behalf as may become necessary.

Lehmann, Higginson & Co. *v.* The Texas and Pacific Railway Company, the Missouri, Kansas and Texas Railway Company, and George A. Eddy and H. C. Cross, receivers of said Missouri, Kansas and Texas Railway Company. (5 I. C. C. Rep., 44.)

607. A schedule of rates designated a "joint freight tariff" announcing a rate from New Orleans to Kansas City of 30 cents per hundred pounds of sugar was duly published and filed with the Commission by the New Orleans Traffic Association on behalf of the roads composing said association "and connections." The Texas and Pacific Railway Company, a member of said association, in its own behalf, issued and filed a supplemental sheet announcing said rate of 30 cents effective. The several companies composing said traffic association operate roads extending to and leading out of New Orleans, but none of them extending to Kansas City: *Held*, That a joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and that the publication and filing of said schedule and supplemental rate sheet did not establish, as provided by section 6 of the act to regulate commerce, a joint tariff of rates and charges on a continuous line from New Orleans to Kansas City over the roads of said association, or of any one of them, in connection with any other road or roads. *Held, further*, That where freight passes over a continuous line or route operated by more than one company on which no joint tariff of rates or charges has been established, the tariff of rates or charges is the sum of the established local rates or charges of the several companies operating such continuous line.

608. Several railway companies forming a continuous through line carried certain traffic to the terminal point at a 30-cent rate and for the same rate to an intermediate point, and to a point on a branch line more distant than said intermediate but less distant than said terminal point they maintained a rate of 42 cents on the like traffic: *Held*, That the roads might lawfully maintain the same rate at the intermediate and terminal points, and that some higher rate might be maintained to the branch-line point off the direct through line without unjust discrimination. *Held, further*, That as to the branch-line point the complainant was entitled to a refund of the amount paid in excess of a reasonable rate.

The Hezel Milling Company *v.* The St Louis, Alton and Terre Haute Railroad Company and the Illinois Central Railroad Company. (5 I. C. C. Rep., 57.)

609. For the carrier to pay the larger expense of the transportation of a remote shipper's merchandise to the station, and not to pay the less expense of such transportation of the nearer shipper's merchandise, would be the equivalent of a rebate to the former, the railroad service proper being the same to each and at the same rate; nor would it be treating all patrons with statutable equality to bear a part of the cartage expense for one shipper and not bear a part of it for another.

610. Rates for the transportation of flour originating at St. Louis or East St. Louis and shipped over defendants' lines are the same, and such flour is forwarded by the first-named defendant from its receiving station in East St. Louis. Shippers in St. Louis deliver flour to rail or wagon transfer companies at their stations in St. Louis and defendants bear the cost of transfer to said receiving station, the average being about 6 cents per barrel, or St. Louis shippers sometimes deliver to the wagon transfer company at their mill doors and then bear half of the cartage expense by wagon, the defendants the other half. Petitioner, who is a manufacturer and shipper of flour over defendants' lines in competition with St. Louis millers, teams flour from its mill, about one-half a mile, to said receiving station at East St. Louis, at a cost of 6 cents a barrel, or loads it on cars furnished by the defendants on a side track contiguous to said mill, at a cost of about 3 cents a barrel, being required to so load such cars that the lot for the nearest station is placed in the forward part of the trains and lots for other stations are arranged consecutively, according to distance, and also being required to clean and repair such cars before using. *Held*, That on flour destined to points outside the State which the initial carrier requests petitioner to haul to its station, or which petitioner is compelled to haul there by reason of proper cars not being furnished on said side track for loading, petitioner is entitled to a reduction of 6 cents a barrel from rates in force as long as defendants bear that amount of the cost of cartage for other shippers. *Held, further*, That defendants' rule requiring petitioner to clean and repair cars furnished on said side tracks is unreasonable, but the requirement that petitioner shall load such cars according to stations is, in view of counter advantages, not unreasonable, and rates on

flour loaded by petitioner in properly cleaned and repaired cars so furnished are, upon the facts, properly the same as rates in force on shipments of flour originating in St. Louis.

611. With reference to the transportation of flour, defendants seem to treat St. Louis and East St. Louis as a single business community; therefore they can not complain if this case is determined upon that theory. Taking petitioner's flour in cars from its mill is presumably equal in value to its expense of hauling by team; therefore petitioner can not complain that the carriers bear a portion of the cartage expense of the St. Louis millers equal to the benefit it receives from being able to deliver on the side track at its mill. Questions arising under a practice of partial or absolute free cartage, or growing out of the existence of side tracks to shippers' doors, must depend largely for solution on the particular circumstances of each case.

In the matter of the Carriage of Persons Free or at Reduced Rates, by the Boston and Maine Railroad Company. (5 I. C. C. Rep., 69.)

612. The defendant issued passes entitling the holders to free transportation over the lines of its system, extending into the States of Maine, New Hampshire, Vermont, and Massachusetts; there were several classes of the persons who received the passes, among them gentlemen long eminent in the public service, higher officers of the State, prominent officials of the United States, members of the legislative railroad committees of the above-named States, and persons whose good will was claimed to be important to the defendant: *Held*, That the giving of free transportation to such persons was a violatien of the act to regulate commerce.

613. The defendant also issued such passes to other classes of persons, among them the sick, necessitous and indigent, proprietors of hotels, members of the families of employees, agents of ice companies, milk contractors, State railroad commissioners, trustees of railroad mortgages, and newspaper publishers for advertising: *Held*, as to these latter classes of persons that as the investigation as to them had not been finished, the case should be held for further consideration and order.

614. When an investigation by the Commission to inquire into the business management of a common carrier has been fully concluded as to some matters, and not concluded as to others, an order may be made *pendente lite*, as to the former, and the cause retained for further consideration and order as to the latter.

615. Upon the facts found in this case, *Held*, That the second section of the act prohibits the giving of free transportation to the persons embraced within the classes first above named; that a carrier is bound to charge equally to all persons regardless of their relative individual standing in the community; that the words, "under substantially similar circumstances and conditions," relate to the nature and character of the service rendered by the carrier, and not to the official, social, or business position of the passenger; that section 22 of the act is exceptive in character and only applies to the persons and subjects expressly specified therein.

William H. Macloon *v.* The Chicago and Northwestern Railway Company. (5 I. C. C. Rep., 84.)

616. The provisions of the eighth, ninth, thirteenth, fourteenth, fifteenth, and sixteenth, sections of the act to regulate commerce construed in the light of recent decisions in Federal courts. *Held*, That a procedure for the enforcement of lawful orders of the Commission founded upon controversies requiring trial by jury having been provided by the amendment of March 2, 1889, of the sixteenth section of the act to regulate commerce, it is the duty of the Commission to pass upon the question of reparation for past damages whenever a claim is made therefor.

617. Defendant's railroad connects at Janesville, Wis., with the Chicago, Milwaukee and St. Paul Railway. Complainant is a merchant doing business at that point and having coal yards on the line of the latter road, but receiving shipments from points on the line of the defendant road, and his financial responsibility is not questioned in this proceeding. Carriers operating in that section of the country are members of a car-service association, which has established a rule requiring the payment of demurrage charges when cars are retained by shippers more than forty-eight hours after receiving notice that such cars are in position to unload, and the rule is set forth by the carriers in their bills of lading. Upon all the facts in this case, *Held*, That the action of defendant in refusing, after payment of freight and offer of customary switching charges, to switch two carloads of coal to the connecting line for delivery at the coal yard of the complainant on such line

unless he promised in advance to pay any demurrage charges that might be made, regardless of whether they were just or legally enforcible, was unreasonable, notwithstanding complainant had previously refused to pay demurrage charges on other cars shipped to his siding, which he had failed to fully unload within the time prescribed by the rule, and defendant by retaining the coal in its possession and demanding such promise from complainant as a condition precedent to the performance of its duty as a carrier subjected the complainant to unlawful prejudice and disadvantage. *Held further*, That complainant is entitled to reparation for injuries sustained in consequence of such refusal and neglect of defendant, but the proof as to the extent of his damages being insufficient, that the case be held open for the present without order, and that upon notice of adjustment by the parties of the question of reparation the petition be dismissed.

Charles P. Perry *v.* The Florida Central and Peninsular Railroad Company, The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The Northeastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Pennsylvania Railroad Company, comprising The Atlantic Coast Dispatch Line. (5 I. C. C. Rep., 97.)

618. The act to regulate commerce expressly requires that transportation charges shall be reasonable, and empowers the Commission to enforce its provisions. Wherever the power of enforcing reasonable rates exists there must also exist the power to ascertain what is reasonable. The Commission is not restricted to finding that an existing rate is unreasonable and forbidding its continuance, but has the further authority to ascertain, order, and enforce a rate that is reasonable. The power to determine and declare what is a maximum reasonable rate also results from those provisions of the act which require the Commission to determine what reparation, if any, should be made by carriers to parties injured by their violations of law, and in cases of unreasonable rates the measure of reparation due to such a party is the difference between the rate actually charged and the reasonable rate which should have been charged.

619. Divisions of a joint rate among the carriers are sometimes inquired into for the purpose of ascertaining, from the divisions, whether a rate unreasonable in itself may not be traced to the inequality of such divisions.

620. The possible influence of water competition upon rates for the transportation of oranges and the nonexistence of such competition in the carriage of berries, because the latter can not be carried by water in any considerable quantities, does not authorize defendants to take advantage of the situation and charge unreasonable rates on berries.

621. Rates on interstate shipments from points on the initial carrier's line were shown to be greater for the shorter distance from Lawtey than for the longer distance over the same line in the same direction from Gainesville, and defendants were ordered to bring their rates from Lawtey and other points in that territory in conformity with the provisions of the fourth section of the act to regulate commerce. The fact that the initial carrier's line joins its connecting line at both Callahan and Gainesville and that traffic from Lawtey, an intermediate station, may be routed through Gainesville, the longer distance point, does not authorize defendants to charge the higher rate from Lawtey when the traffic from that point and from Gainesville is in fact routed through Callahan.

622. Carriers should not treat shipments of traffic intended to be continuous between interstate points as consisting of two kinds of service independent of each other, the one to or from a so-called basing or competitive point on a through rate, and the other between the basing or competitive point and a so-called local or intermediate point on a local rate. *Re* Tariffs and Classifications of Atlantic and West Point R. Co. *et al.*, 2 Inters. Com. Rep., 461; 3 I. C. C. Rep., 46; and Hamilton and Brown *v.* Chat., Rome and Col. R. Co. *et al.*, 3 Inters. Com. Rep., 482; 4 I. C. C. Rep. 686, cited and affirmed.

623. Circumstances and conditions which affect the question of reasonable rates on strawberries from points in Florida to New York City, including such characteristics of the traffic and its transportation as volume, weight, bulk, value, perishability, risk, expense of handling, and quick carriage in perishable freight trains, and return of empty cars, stated and compared with

those surrounding the transportation of oranges and other traffic carried by defendant in the same trains. Upon the facts appearing in this case, *held*, that defendants' rates for services rendered in receiving, forwarding by their perishable freight trains, and delivering strawberries from Florida points to New York City should not exceed $3.33 per hundred pounds, or $1.66⅔ per crate of 50 pounds, from Callahan, Fla., to New York, and from Lawtey, Hammock Ridge, and other stations more distant from New York than Callahan, the total through rates should not be unreasonably in excess of the charge from Callahan, and should be filed with the Commission and published according to law.

624. Where claim for reparation is made in a complaint of unreasonable rates the burden of proof is on complainant to show the facts connected with the claim, and when these facts have not been sufficiently brought out to enable the Commission to justly determine what reparation is due to the complainant, in such cases it will decline to award reparation.

625. If defendants' rates on strawberries had been so excessive and unjust as to have rendered complainant's crop valueless to pick and market, it would not entitle him to reparation for loss thereby sustained, because such damages would be too speculative, uncertain, and remote.

J. M. Rising, J. L. Brownlee, D. Q. Cole, and others, *v.* The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The Northeastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, and The Pennsylvania Railroad Company. (5 I. C. C. Rep., 120.)

This case was decided in accordance with the principles laid down in the foregoing case of Perry.

Murphy, Wasey & Co. *v.* The Wabash Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Detroit, Grand Haven and Milwaukee Railroad Company, The Chicago and Grand Trunk Railroad Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Burlington and Kansas City Railway Company, and the Chicago, Rock Island and Pacific Railway Company. (5 I. C. C. Rep., 122.)

626. The power and duty of the Commission to fix minimum rates in cases of complaints against rates as unjust, excessive, and unreasonable, reaffirmed.

627. A carrier should receive a greater compensation in the aggregate for hauling a carload of large tonnage than one of less tonnage, but, other things being equal, as a general rule the rate per 100 pounds should be less in the former than in the latter case.

628. A rate prescribed for complainants' shipments in mixed carloads of chair stuff, spring bed and mattress material (all wooden), minimum weight 25,000 pounds, of not exceeding 20 cents per 100 pounds from Chicago to Omaha and not exceeding 15 cents per 100 pounds from Mississippi River points to Omaha, resulting in a through rate from Detroit to Omaha via Chicago of 30 cents per 100 pounds and via Mississippi River points not through Chicago of 31½ cents per 100 pounds.

The Railroad Commission of Florida *v.* The Savannah, Florida and Western Railway Company *et al.* (5 I. C. C. Rep., 136.)

629. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed, said application was, after due hearing, denied.

William H. Harvey *v.* The Louisville and Nashville Railroad Company. (5 I. C. C. Rep., 153.)

630. The action of the defendant in granting to members of the city council of New Orleans and the clerk of that body, on account of their official positions, free transportation as passengers over all or some portion of its interstate lines violates the act to regulate commerce and is unlawful. Case of Boston and Maine Railroad Company approved and followed.

The Lincoln Creamery *v.* The Union Pacific Railway Company. (5 I. C. C. Rep., 156.)

631. On complaint of an unreasonable rate on butter in less than carloads from Lincoln, Kans., to Denver, Colo., it appears that defendant's line between those points runs through a sparsely populated country, furnishing com-

paratively little business to the carrier, and also that the rate is common to numerous towns of importance at an equal or greater distance from Denver, and is maintained by all the roads extending into that territory. *Held*, That the charge complained of is not shown to be unreasonable, nor does the evidence furnish sufficient reason for interfering with a rate established by a number of roads and common to many communities.

632. Comparison with rates in other localities where dissimilar conditions and modifying circumstances are found is not sufficient to establish the unreasonableness of the charges complained of. Where no discrimination is alleged as between points of production tributary to the same market, or on account of disproportionate rates on different kinds of traffic similar in character and volume, it must affirmatively appear that the charges assailed are unreasonable and ought to be reduced.

The Delaware State Grange of the Patrons of Husbandry *v.* The New York, Philadelphia and Norfolk Railroad Company *et al.* (5 I. C. C. Rep., 161.)

633. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed, said application was, after due hearing, denied.

The Toledo Produce Exchange, The Cleveland Board of Trade *v.* The Lake Shore and Michigan Southern Railway Company, The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, and The Boston and Albany Railroad Company. (5 I. C. C. Rep., 166.)

Edward Kemble *v.* The Lake Shore and Michigan Southern Railway Company, The New York Central and Hudson River Railroad Company, and The Boston and Albany Railroad Company.

634. The Commission is a special tribunal, whose duties, though largely administrative, are sometimes semijudicial, but it is not a court empowered to render judgments and enter decrees. The rule of estoppel by record, which is at all times technical in character and applies to the record of courts and proceedings before Federal officials whose acts are final, is not applicable to the complaint of Kemble, who had appeared before the Commission in a representative capacity as member of a committee of a complaining mercantile society in proceedings heretofore dismissed, which involved questions similar to those presented in the case now under consideration and brought by him as an individual.

635. Defendants offered to waive objection to depositions taken without notice on behalf of complainant, The Toledo Produce Exchange, if all the evidence taken in certain proceedings which involved questions similar to those herein should be treated and considered as evidence in this case, and the offer was accepted, but complainant's agent afterwards sought to rescind the agreement, although complainant had leave to put in whatever additional evidence it desired. *Held*, That the case should be considered according to the original agreement.

636. On complaints of unreasonable and discriminating rates from Chicago and other Western points to Boston, produced by the addition to rates from the same points to New York of a so-called arbitrary or differential of 10 cents on first-class articles, 6 cents on goods of the second class, and 5 cents on other classes of freight, and which also involved the propriety of combination rates through intermediate points, the divisions of through rates between the carriers, and the relation of lighterage charges in New York Harbor to the rates in question. *Held*, That the question involved herein is the through rate as affected by the arbitrary differential, and divisions of the through rate accruing to the different roads need not be considered, nor are possible rate combinations properly comparable with the through rate except for limited purposes. That it can make no difference to the shipper or the public how carriers adjust between themselves the expense of lighterage paid out of the through rate to New York. That the arbitrary differentials now charged are unlawful and should hereafter be made by adding a percentage to the New York rate on shipments included in the six classes of freight from Chicago and points east thereof and west of Buffalo to Boston and other New England points, and that the defendants and other carriers interested be allowed twenty days to show cause by answer why orders should not issue commanding them to desist from charging said arbitrary differentials and requiring said rates to Boston and New England points to be made by adding to the New York rate an increase of 10 per cent thereof, and if no such answers be filed that such order be issued forthwith.

George Rice *v.* The Cincinnati, Washington and Baltimore Railroad Company, The Cincinnati, Indianapolis, St. Louis and Chicago Railway Company, The Chicago,

Rock Island and Pacific Railway Company, The Union Pacific Railway Company, The Central Pacific Railroad Company. (5 I. C. C. Rep., 193.)

George Rice *v.* The Cincinnati, Washington and Baltimore Railroad Company, The Ohio and Mississippi Railway Company, The St. Louis and San Francisco Railway Company, The Atchison, Topeka and Santa Fe Railroad Company, The Atlantic and Pacific Railroad Company, The Southern Pacific Company.

George Rice *v.* The Louisville and Nashville Railroad Company.

637. The Commission possesses no authority to compel carriers subject to its jurisdiction to provide any particular kind of cars or other special equipment, but, in the absence of adequate equipment freely afforded to all patrons alike, carriers should so adjust rates between those who can and those who can not furnish their own conveyance that in the relative charges to each there shall be no discrimination against the dependent shipper.

638. Disadvantage to the shipper of one product can hardly be predicated upon charges for transporting another product differing essentially in character from the former and widely dissimilar in the demands which it supplies. In such cases the rates themselves are insufficient to convict the carrier of unlawful discrimination; but the amount actually charged on one commodity may be of great importance in determining whether the charge on another commodity is reasonable or otherwise, especially when both have numerous points of resemblance in respect to the cost and hazard of transportation.

639. An allegation of unjust discrimination resulting from shipments of oil in tank cars owned by the shipper and low return rates on cotton-seed oil and turpentine in the same tanks, in connection with mileage paid for use of tank cars, can not be sustained without evidence showing mutuality of interest between the two classes of shippers or the payment of excessive car mileage.

640. Rulings based upon special facts and local conditions are not to be regarded as formulated precepts for general observance. A regulation which promotes fairness and relative equality where the carriage of oil is confined to tank and barrel shipments might be an unjust and oppressive requirement where four-fifths of the transportation is effected by another mode. The question in these cases of free carriage of barrels in petroleum shipments is not now decided.

641. In assuming for transportation purpose that a barrel of refined petroleum oil weighs 400 pounds and that a gallon of that commodity weighs 6.3 pounds when shipped in tanks, defendants use constructive or hypothetical weights so much out of proportion to actual weights that positive and measurable preference is constantly granted to the shipper by the tank method; and so far as that practice enables the tank shipper to secure the carriage of more pounds of freight for the same money than the shipper in barrels it subjects the latter to unlawful prejudice. When actual weights can not be ascertained without needless inconvenience, there is no serious objection to the use of estimated or constructive weights, provided the method of estimation works no inequality in its practical application to competing modes of conveyance.

642. The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank car is wholly indefensible. Losses from leakage and evaporation are not less proportionally when the shipment is made in barrels, and no circumstance is discovered or reason advanced which justifies a concession of that nature to the shipper who furnishes his own conveyance, when no corresponding allowance is made to a rival shipper using the means of transportation provided by the carrier.

643. Charges of the Louisville and Nashville Railroad for the transportation of petroleum to several points on its lines are not only apparently unreasonable in themselves, but the existing disparity in rates to neighboring localities creates presumption of extortion in exacting the higher charges; moreover, as between tank and barrel shipments of petroleum, this adjustment of rates operates to the general advantage of the former mode of conveyance. Water competition to various points on its lines may furnish justification for rates to intermediate inland points somewhat higher than the railroad must accept to participate in business to the more remote locality favored with water carriage, but when charges for the shorter distance on these lines are three times those for the longer, the disparity is absurd and inexcusable. The lower figure must be unremunerative or the higher must be extortionate. This defendant ordered to revise and correct its charges on petroleum to many interior and local points on its lines, and make such reductions and modifications therein as will remove the gross disproportions and inequalities now found to exist.

644. The case against the Louisville and Nashville Railroad Company is retained for further evidence and argument on the question whether water competition at various points justifies a departure from the general requirement of the fourth section, and for such further investigation of its charges to intermediate and noncompetitive points, and direction in relation thereto, as may appear to be required. The cases against the other defendants are reopened for further evidence and argument in regard to the reasonableness of rates on petroleum products to the Pacific coast from points east of the ninety-seventh meridian. All the cases are held open for additional evidence and argument on the question of the free carriage of barrels in the transportation of petroleum oil; also for such further direction to the carriers as may appear necessary in regard to the extent that weights now assumed should be made relatively more favorable to the shipper in barrels. Amendment of pleadings allowed upon the application of any party and on such notice as the Commission may direct.

E. M. Raworth *v.* The Northern Pacific Railroad Company, The Oregon Railway and Navigation Company, The St. Paul, Minneapolis and Manitoba Railway Company, The Union Pacific Railway Company, and The Southern Pacific Company. (5 I. C. C. Rep., 234.)

645. Carriers alleging justification of a departure from the "long and short haul" rule of the statute must in their answer to complaints clearly advise complainants of the facts and circumstances relied on as constituting such justification.

646. There is competition by rail over the Canadian Pacific Railway or by water around Cape Horn that justifies a departure from the "long and short haul" rule of the statute in the transportation of refined sugar from San Francisco to Fargo and through Fargo to St. Paul.

647. The "long and short haul" rule of the statute was intended to maintain and promote, and not to destroy or neutralize, natural commercial advantages resulting from location, and competition at St. Paul with sugar from the East refined in New York, although necessitating the prevailing low rates to St. Paul on sugar from the West refined at San Francisco, does not justify the greater charge on the latter to Fargo than to St. Paul.

648. Section 2 of the "act to regulate commerce," forbidding unjust discrimination, applies even in cases where a departure from the "long and short haul" rule of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul does not justify a disparity in rates so great as to result in unjust discrimination.

649. The facts, that the rates to the longer-distance point can not be raised without a loss of the traffic involved, and that the rates to both the long-distance point and the short-distance point are not unreasonable in themselves, do not justify a disparity in such rates resulting in unjust discrimination as against the shorter-distance point.

650. The Northern Pacific Railroad Company is not exempt under its charter from the authority to regulate rates conferred on the Commission by the act to regulate commerce.

The Anthony Salt Company *v.* The Missouri Pacific Railway Company. (5 I. C. C. Rep., 299.)

The Anthony Salt Company *v.* The St. Louis and San Francisco Railway Company.

Samuel Matthews *v.* The Union Pacific Railway Company, The Missouri Pacific Railway Company.

Samuel Matthews *v.* The Atchison, Topeka and Santa Fé Railroad Company, The Chicago, Santa Fé and California Railway Company, The Gulf, Colorado and Santa Fé Railway Company.

Edward E. Barton *v.* The Chicago, Rock Island and Pacific Railway Company.

651. The continued reduction of relative rates when brought about by the removal of artificial and unnatural differences is not undesirable, but where the difference results from dissimilar circumstances and conditions, and the true difficulty appears to be a real and natural advantage which the one region has and enjoys over the other, such continuing disturbances of rates ought not to be inaugurated, especially when the charges are commodity rates not shown to be unreasonable in themselves.

652. Salt requires and gets a commodity rate lower than class rates, and the roads should only be limited as to such lower rating by the rule that a commodity shall not be carried at such unremunerative rates as will impose burdens upon other articles transported to recoup loss incurred in carrying that commodity.

653. On complaints of relatively unreasonable and discriminating rates on salt from Kansas fields to various points as compared with rates to the same points from the salt fields of Michigan. *Held*, That any advantages which inure to Michigan salt manufacturers from rates to points in Iowa, Illinois, Missouri, and Nebraska are advantages arising from natural situation, and that the low rate to Missouri River points is influenced by conditions which are beyond the defendant's control, and existed before Kansas salt was discovered. *Held further*, That rates on salt to points south and southwest of Hutchinson, Kans., and St. Louis, Mo., do constitute undue preference in favor of Michigan as against Kansas salt, and that they should be readjusted by the Santa Fé Company so that, while observing the law as to the long and short haul, the advantages of distance belonging to Kansas salt fields shall be given to them in any territory supplied by its lines which lies as near or nearer to Hutchinson than St. Louis.

The Eau Claire Board of Trade *v.* The Chicago, Milwaukee and St. Paul Railway Company, Chicago and Alton Railroad Company, Atchison, Topeka and Santa Fé Railroad Company, Chicago, Rock Island and Pacific Railway Company, Chicago, Burlington and Quincy Railroad Company, Chicago and Northwestern Railway Company, Chicago, St. Paul and Kansas City Railway Company, Missouri Pacific Railway Company, Great Northern Railway Company, Wabash Railroad Company, Chicago, St. Paul, Minneapolis and Omaha Railway Company, defendants, and The Musser Lumber Company and others, interveners. (5 I. C. C. Rep., 264.)

654. The doctrine that transportation charges should be proportioned to the distances between different points, where those distances are greatly dissimilar, has never been advocated by the railroads or recommended by the Commission. While distance is an ever-present element in the problem of rates, and not unfrequently a controlling consideration, the general practice of rate making is opposed to the principle of exact proportion, and there is no opportunity for its application under present conditions. Where all the distances brought into comparison are considerable, and the differences between them relatively small, there should be substantial similarity in the respective rates, unless other modifying circumstances justify disparity.

655. That rates should be fixed in inverse proportion to the natural advantages of competing towns with the view of equalizing "commercial conditions," as they are sometimes described, is a proposition unsupported by law, and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and the exaction of charges, unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute.

656. On complaint of a relatively unreasonable rate on lumber from Eau Claire to various points on the Missouri River as compared with rates to the same points from La Crosse, Winona, and various other lumber-shipping points. *Held*, That the case must mainly be determined by comparing the rate in question with the rates from neighboring towns, similar in size, situation, and volume of competing traffic, and at approximately the same distance from common markets; that the rate complained of subjects Eau Claire to undue prejudice and disadvantage, and is unlawful; and that such rate should not exceed the rate from La Crosse and Winona by more than 2 cents per hundred pounds when, as at the time complaint was filed, the rates from those points is not over 14 cents per hundred, nor more than 2½ cents per hundred pounds above the present rate of 16 cents per hundred from La Crosse and Winona.

657. A railroad can not be said to discriminate against a town which it does not reach and in whose carrying trade it does not participate; therefore, no case is made out against the carriers which were made parties at the request of the original defendant, because none of them have lines extending to Eau Claire. Preference, prejudice, and other like terms imply comparison, and the basis of comparison is wanting unless the rates compared are made by the same carrier. But these parties having defended and endeavored to justify the differential found excessive, while not technically subject to an order for its correction, have no more right to render it ineffectual than to openly disregard a direction clearly within the scope of the Commission's authority. The intervening defendant, the Omaha road, though serving the complaining town, need not, for reasons stated, be included in the order directing the reduced rate, but the case will be held open as against that company for such direction as may hereafter be required.

L. N. Trammell, Allen Fort, and Virgil Powers, constituting and composing the Railroad Commission of Georgia, *v.* The Clyde Steamship Company, The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad, The Richmond and Danville Railroad Company, and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia. (5 I. C. C. Rep., 324.)

Same *v.* The Ocean Steamship Company, The Central Railroad and Banking Company of Georgia, The Georgia Pacific Railway Company, and The Richmond and Danville Railroad Company, lessees of The Central Railroad of Georgia.

Same *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of The Cincinnati Southern Railway, the Cincinnati Southern Railway Company, The East Tennessee, Virginia and Georgia Railway Company, the Central Railroad and Banking Company of Georgia, The Georgia Pacific Railway Company, and The Richmond and Danville Railroad Company, lessees of The Central Railroad of Georgia.

Same *v.* The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, and The Cincinnati Southern Railway Company.

Same *v.* The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad, The Richmond and Danville Railroad Company, and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia, The Atlanta and West Point Railroad Company, and the Western Railway Company of Alabama.

Same *v.* The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, individually and as lessee of The Western and Atlantic Railroad, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of The Cincinnati Southern Railway, The Cincinnati Southern Railway Company, The East Tennessee, Virginia and Georgia Railway Company, The Atlanta and West Point Railroad Company, and The Western Railway Company of Alabama.

Same *v.* The Clyde Steamship Company, The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad, The Richmond and Danville Railroad Company, and The Georgia Pacific Railroad Company, lessees of The Central Railroad of Georgia, The Atlanta and West Point Railroad Company, and The Western Railway Company of Alabama.

658. The fact of a receivership for a defendant carrier subsequent to complaint should not interfere with the progress of a proceeding brought merely for the purpose of railway regulation.

659. The phrase "common control, management, or arrangement for continuous carriage or shipment," in the first section of the act to regulate commerce, was intended to cover all interstate traffic carried through over all rail or part water and part rail lines. The receipt, successively, by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.

660. The total rate for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate is made is only material as bearing upon the legality of the aggregate charge, and how any reduction may be accomplished is matter for the carriers to determine among themselves.

661. The second, third, and fourth sections of the act to regulate commerce compared with provisions in English statutes. English decisions examined, and the frequent citation of such decisions to influence cases brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country, and methods of trade and transportation, considered and criticised.

662. The fourth section of the act to regulate commerce construed, and the principles laid down *In re* Petitions of Louisville and Nashville R. R. Co., 1 Inters. Com. Rep., 278, 1 I. C. C. Rep., 31, reaffirmed, except the ruling therein whereby carriers were permitted to judge for themselves in the first instance

of what constitutes "rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition," which is hereby overruled.

663. The competition of carriers subject to the act to regulate commerce does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines.

664. The competition of markets on different lines for the sale of commodities at a given point served by both lines does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines. To determine the force and effect of such competition involves consideration of commercial questions peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation is conducted. Carriers can not create abnormal situations by making rates which equalize advantages and disadvantages of localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long-haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines.

665. The carrier has the right to judge in the first instance whether it is justified in making the greater charge for the shorter distance under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulations under the act to regulate commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar, and carriers must not charge less for the longer distance except upon the order of this Commission.

666. When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. There seems to be no limitation upon the power of the Commission to grant relief under that proviso when, after investigation, the Commission is satisfied that the interests of commerce and common fairness to the carriers require that an exception should be made.

667. Complaints in cases No. 324 and No. 325 dismissed. In cases Nos. 314, 315, 316, 317, and 326, defendants ordered to cease and desist from charging more to shorter than to longer distance points mentioned in the complaints, or file applications for relief under the proviso clause of the fourth section and show cause thereon, within a time specified.

The Independent Refiners' Association of Titusville, Pa., and the Independent Refiners' Association of Oil City, Pa., *v.* The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, The Delaware and Hudson Canal Company, The Fitchburg Railroad Company, and The Boston and Maine Railroad Company. (5 I. C. C. Rep., 415.)

Same *v.* The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, and the Lehigh Valley Railroad Company.

Same *v.* The Pennsylvania Railroad Company and the Western New York and Pennsylvania Railroad Company.

668. It is the duty of the carrier to equip its road with the means of transportation, and, in the absence of exceptional conditions, those means must be open impartially to all shippers of like traffic.

669. Ownership of a car rented to a carrier and for the use of which the carrier pays a full consideration does not of itself entitle the owner to the exclusive use of such car, and, *if* the owner may in the contract of hire to the carrier stipulate for the exclusive use of the car, it must be upon such terms as shall not constitute an unjust discrimination against shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired.

670. Where oil is transported by the carrier both in barrels and tank cars and the use of the tank cars is not open to shippers impartially, but is practically limited to one class of shippers, the charge for the barrel package in barrel shipments in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels on like quantities of oil between like points of shipment and destination than to the tank shipper, is a discrimination against the former in favor of the latter, for which no legal justification has been shown in these cases.

671. The oil rates from Oil City and Titusville, Pa., to New York and New York Harbor points and Boston and Boston points, exclusive of the charge for the barrel package in barrel shipments, are not shown to be either unreasonable in themselves or relatively unreasonable as between these points.

672. An agreement for the pooling of traffic between a carrier by rail subject to the act to regulate commerce and a carrier by pipe line does not fall within the description of contracts prohibited by section 5 of that act.

In the matter of alleged Unlawful Charges for the Transportation of Coal by the Louisville and Nashville Railroad Company. (5 I. C. C. Rep., 466.)

673. Upon investigation had in a proceeding instituted by the Commission on its own motion, it appeared that the respondent had in force over its line to Nashville a special rate on coal when used for manufacturing purposes by persons named upon the manufacturers' lists prepared by the railroad company. These lists were furnished to dealers who, on selling coal to such manufacturers, issued certificates which entitled them to obtain a refund from the railroad company amounting to the difference between the regular and special rates. Pending investigation, the respondent discontinued the "manufacturers' rate," and put in force a new coal tariff to Nashville, whereby coal, "run of mines, nut, and slack," is given a rate of $1 per ton the year round, and "screened" coal a rate of $1.15 per ton April to September, and for the remainder of the year a rate of $1.40 per ton. The rate from the same mines to Memphis, a point affected by water competition for coal traffic, is $1.40 per ton on all coal the year round, and respondent buys coal at the mines and sells it in the Memphis market. *Held,*

674. That the practice abandoned by the respondent common carrier of arbitrarily determining what persons should receive the so-called "manufacturers' rate" was a clear violation of the act to regulate commerce.

675. That the rate of $1 per ton charged by respondent upon coal, "run of mines, nut, and slack," is not unreasonably low, nor disproportionate to the rate of $1.40 per ton to Memphis; neither, in view of circumstances affecting coal traffic at Memphis, is a rate of $1.15 on screened coal to Nashville relatively unreasonable as compared with the Memphis rate; but so long as the Memphis rate does not exceed $1.40 rates on said kinds of coal from the mines to Nashville should not, during any portion of the year, exceed $1 or $1.15, respectively, and any reduction in the Memphis rate should be accompanied by proportionate reductions in rates on said different kinds of coal to Nashville.

The Merchants' Union of Spokane Falls *v.* The Northern Pacific Railroad Company and The Union Pacific Railway Company. (5 I. C. C. Rep., 478.)

676. Transportation by rail from Eastern points to the "Pacific coast terminals," Portland, Tacoma, and Seattle, is affected by the competition, of controlling force and in respect to traffic important in amount, of water carriers reaching the same terminals, but such competition does not affect like transportation from said points to the city of Spokane, Wash. *Held, therefore,* That defendants are justified, by reason of such dissimilarity in circumstances and conditions, in maintaining higher rates on shipments of like property from said points for the shorter distance to Spokane than for the longer distance to said Pacific terminals. The competitive position and attitude of the Canadian Pacific Railway, a foreign carrier, considered in connection with existing water competition, but the separate effect of competition by the Canadian route not found or determined.

677. Class rates in effect upon the defendant lines and the lower commodity rates to their Pacific terminals examined and discussed. *Held,* That the only justification for a through rate less than an intermediate rate on the same article is the compulsion of rail carriers to accept the reduced compensation or suffer ocean rivals to perform the service, and where the pressure of this alternative is not felt there is no ground upon which the lower through charge can be excused. No article should be carried to terminal points on commodity rates which, if the class rates were imposed, would still seek rail rather than water transportation, and any violation of this rule is unjust discrimination against the intermediate town compelled to pay the higher class rate on the same article.

678. In the matter of carload and mixed-carload rates, minimum weight of shipments entitled to car-load rates, and in all other respects, defendants are required to provide for and allow the same privileges, facilities, and advantages on shipments to Spokane as are provided or allowed on like shipments to Portland or other Pacific coast terminals.

679. "Blanket" class rates applying upon the Northern Pacific road for a distance of over 580 miles found relatively unreasonable: *Also held*, That rates to Spokane, the principal distributing center to which such blanket rates apply, are unreasonable in themselves. Defendants ordered to cease and desist from charging rates on property from Eastern points to Spokane, which materially exceed 82 per cent of class rates now in effect both to Spokane and Pacific coast terminals. Provision made for reopening the case if necessary and bringing in other carriers who may be affected by the order.

680. The Northern Pacific Railroad Company, notwithstanding certain provisions in its charter, is subject, like all other interstate carriers, to the authority conferred by Congress in the act to regulate commerce. Citing and affirming Raworth *v.* Northern Pac. R. R. Co., 3 Inters. Com. Rep., 857; 5 I. C. C. Rep., 257.

The Potter Manufacturing Company *v.* The Chicago and Grand Trunk Railway Company, The Atchison, Topeka and Santa Fe Railroad Company, and The Southern Pacific Company. (5 I. C. C. Rep., 514.)

681. Continuance of a system of unjust rates can not be required or excused on the ground that parties have made investments and entered into the business affected thereby on the faith of assurances from carriers of their maintenance, although a change might work injury to the parties whom such rates had unduly favored.

682. An advantage resulting from just rates, coupled with the enterprise and outlay necessary to utilize them, is legitimate, and carriers should not undertake to deprive a shipper of this advantage by a change of such rates.

683. A rate on a particular class of goods, which is unreasonable or discriminatory in itself, is not justifiable on the ground that the same rate is give another (and in this case a competitive) class of goods, and as applied to the latter is liberal and advantageous.

684. The question as to correct weights and shipments, as between carrier and shipper, is one of fact to be determined in a manner just to both parties, and as to which the *ex parte* action of either can not conclude the other.

685. Taking into consideration the difference in value of the unfinished and finished cheap bedroom sets involved in this case, and the greater tonnage per car load which can be hauled of the former, and having in view the interests of both carrier and shipper, it is held that the rate on unfinished cheap bedroom sets, as shipped by complainant from Lansing, Mich., to Oakland, Cal., should not exceed 85 per cent of whatever rate may be adopted for such sets in a finished condition.

P. H. Loud, jr., *v.* The South Carolina Railway Company, The Blackville, Alston and Newberry Railroad Company, The Charlotte, Columbia and Augusta Railroad Company, The Carolina, Cumberland Gap and Chicago Railway Company, The Virginia Midland Railway Company, The Barnwell Railroad Company, The Richmond and Danville Railroad Company, The Port Royal and Western Carolina Railway Company, The Pennsylvania Railroad Company, and The North Carolina Railroad Company. (5 I. C. C. Rep., 529.)

686. The question whether property of a carrier in the hands of a receiver appointed after the matters complained of before this Commission are alleged to have occurred is subject to an order of reparation issued by this Commission, is one to be presented to and disposed of by the courts on proceedings therein for the enforcement of such order.

687. Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier and to the commercial value of such traffic (*Delaware State Grange of Patrons of Husbandry* v. *New York, P. and N. R. Co.*, 3 Inters. Com. Rep., 561; 4 I. C. C. Rep., 605), but it is incumbent on parties invoking this rule to make satisfactory and reliable proof as to such antecedent cost and commercial value.

688. In passing upon the reasonableness of rates, the question whether they afford the carrier a proper return for the service rendered is to be considered as well as the result of the business to the shipper or producer of the traffic.

689. Where a special service is required of the carrier, such as rapid transit and speedy delivery in cases of perishable freight, a higher rate than for the carriage of ordinary freight is warranted, and if a carrier charging a rate based on such special service fails to render it, to the damage of the shipper,

and without legal excuse, the remedy of the latter would seem to be by a proper proceeding in a court of law.

690. A reduction in rates by a carrier is not *per se* evidence that the former rates were unreasonable, as such reduction may, as in the present case, be accounted for because of a decrease in cost of transportation and an increase in the volume of the traffic to which such rates apply.

691. The rates on melons complained of in this case having been materially reduced by the defendant carriers since the commencement of this proceeding, and there being no satisfactory evidence that the rates so reduced are unreasonable or excessive, the complaint is dismissed.

The Board of Trade of Chattanooga *v.* The East Tennessee, Virginia and Georgia Railway Company, The Norfolk and Western Railroad Company, The Old Dominion Steamship Company, The Western and Atlantic Railroad Company, The Central Railroad and Banking Company of Georgia, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Baltimore and Ohio Railroad Company, The Central Railroad Company of New Jersey, The Nashville, Chattanooga and St. Louis Railway Company, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie and Western Railroad Company, The New York and New England Railroad Company, and The Delaware and Hudson Canal Company. (5 I. C. C. Rep., 546.)

692. Upon complaint alleging that rates on traffic from New York and other Atlantic seaboard points to Chattanooga are unreasonable and greater for the shorter distance to Chattanooga than for the longer distance over the same line in the same direction to Memphis and Nashville. *Held*, That defendants are justified by the existence of water competition of controlling force in charging less on such traffic for the longer distance to Memphis, but that no such competition exists for such traffic to Nashville, and any greater charge for the transportation of like kind of property from said seaboard points for the shorter distance to Chattanooga than for the longer distance through Chattanooga to Nashville is in violation of the fourth section of the act to regulate commerce. Defendants ordered to cease and desist from making such greater charge to Chattanooga, with leave to file application for relief under the proviso clause of the fourth section within a specified time. Ga. R. R. Com. *v.* Clyde S. S. Co. *et al.*, 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324, cited and affirmed.

693. One transportation line can not be said to meet the competition of another transportation line for the carrying trade of any particular locality unless the latter line could and would perform the service alone if the former did not undertake it.

694. When great disparity exists between charges which are lower to competitive than to intermediate points much less remote, the inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered.

The Chamber of Commerce of Minneapolis, Minnesota, *v.* The Great Northern Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Northern Pacific Railroad Company, The Chicago and Northwestern Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company, The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, The St. Paul and Duluth Railroad Company individually and as lessee of the Duluth Short Line Railway, The Eastern Railway Company of Minnesota, defendants, and the Chamber of Commerce of Milwaukee, The Interior Wisconsin Millers' Association, The Eastern Minnesota Millers' Association, The Southern Minnesota Millers' Association, The Board of Trade of Duluth, Minnesota, The Jobbers' Union of Duluth, Minnesota, The Chamber of Commerce of Duluth, Minnesota, intervenors. (5 I. C. C. Rep., 571.)

695. When a local rate from a given point is alleged unreasonable, but it appears from the record that such local rate is also a proportion of through rates from that point, and as such is the real subject of controversy, the complaint should be directed against the aggregate through rate, not the share received by any initial carrier, and all the carriers composing the through line are necessary parties.

696. A town favorably situated with respect to one through route, but competing in a common market with another town more favorably located on another through route, should not have a reduction of the local rate over roads connecting the two through routes for the purpose of overcoming the natural advantage which the latter competing town enjoys.

697. A milling town possessing great natural, acquired, and improved advantages for the carrying on of that industry, and favorably situated in point of distance to a large grain-producing region, is entitled to the benefits arising from its location, and carriers of grain to that point add to a competing town considerably more remote from points of production, and in other particulars less advantageously located, are not justified in making rates on grain to the competing towns which destroy the advantage the former is entitled to enjoy.

698. Rates on wheat from points in North and South Dakota to Minneapolis as compared with the rates charged over considerably greater distances from the same points to Duluth and adjacent Lake Superior ports subject Minneapolis millers to undue and unreasonable prejudice and disadvantage. Defendants ordered to adjust their rates on wheat from said points to Minneapolis and Duluth upon the basis of distance over nearest practicable routes.

John W. S. Brady and George T. Parkhurst, partners, trading under the firm name of J. Parkhurst & Co., *v.* The Pennsylvania Railroad Company, The Pennsylvania Company, The Pittsburg, Cincinnati and St. Louis Railway Company; and John Henry Nicolai, trading as "Eagle Oil Works," *v.* The Pennsylvania Railroad Company, The Pennsylvania Company, and The Pittsburg, Cincinnati and St. Louis Railway Company. (5 I. C. C. Rep., 635.)

A decision adverse to the defendants having been rendered in this proceeding and an application for rehearing having been filed, said application, was after due hearing, denied.

The Gerke Brewing Company *v.* The Louisville and Nashville Railroad Company; The Kentucky Central Railway Company; The Norfolk and Western Railroad Company. (5 I. C. C. Rep., 596.)

699. The rule expressed by the fourth section that distance shall ordinarily limit the adjustment of rates is not rendered inoperative by the existence at one point of converging lines subject to the act, for the law applies to each of these lines, and neither can put in rates to that point which are lower than shorter-distance charges on its line, until upon a showing of special considerations grounded in justice to its patrons and itself, it obtains permission from the regulating authority so to do. This principle applies both to lines between the same points and to lines reaching the same destination from different points of consignment.

700. Competition with carriers not subject to the statute is based upon natural causes and plain conditions, but the legitimate force of competition with carriers subject to the act depends upon compliance with the law by each of the competitors and the special circumstances and primarily indefinite conditions in each particular case. Georgia Railroad Com. *v.* Clyde S. S. Co., 4 Inter. Com. Rep., 120; 5 I. C. C. Rep., 324, cited and affirmed.

701. When rates from any cause are made greater for shorter than for longer distances, the difference between such rates must in no instance be unreasonable.

James & Abbott *v.* The Canadian Pacific Railway Company; The Maine Central Railroad Company; The Boston and Maine Railroad Company. (5 I. C. C. Rep., 612.)

702. The statute provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant," and defendants are therefore not entitled to a dismissal of the complaint on the ground that the petitioners, being merely commission merchants, can sustain no direct or material damage under the rates in question.

703. When water competition is alleged to justify rates in any case under the statute, the carrier must affirmatively show by proof which does more than create a presumption and which clearly establishes that such competition is a controlling factor in the transportation of traffic important in amount from the point in question.

704. Manufacturing industries should not be deprived, through a carrier's adjustment of relative rates, of advantages resulting from their favorable location in respect of cost of raw material supplied from a common source, or of distance to the common market for the finished product.

705. A departure from equal mileage rates on different branches or divisions of a road is not conclusive that the rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed. Citing Logan *v.* C. & N. W. R. Co., 2 Inters. Com. Rep., 431; 2 I. C. C. Rep., 604.

706. When the reasonableness or relative reasonableness of charges is challenged, every material consideration which enters into the making of such charges,

including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry.

707. The "drive" of shingle logs down rivers which flow past the place of cut in Maine to a seaport in Canada where shingle mills are located, and from which the product may go by sea to market ports, affects shingle traffic from competing mills located along these rivers at a place in Canada and a place in Maine, but operates with less force at the latter point. The rail rate from the Canadian mill to market being fixed with especial reference to the effect of the log drive to and water competition for shingle traffic from the seaport, the rate from the Maine mill should be made upon the same basis.

708. Defendants ordered to restore the relation of rates on shingles to Boston which they established after the filing of complaint herein, but soon after discontinued, to wit, a rate from Fort Fairfield in Maine of not exceeding 6½ cents above the rate in force from Fredericton, in Canada. Complainant's claim for reparation denied.

Charles H. Brownell *v.* Columbus and Cincinnati Midland Railroad Company. (5 I. C. C. Rep., 638.)

W. R. Schrievers and 52 others, claiming to be large dealers in eggs.

Jacob Guagi and 295 others, claiming to be small dealers in eggs.

Clark A. Post and 421 others, claiming to be farmers and, among other things, producers of eggs and selling eggs to local dealers in small quantities, intervenors as complainants.

The Pittsburg, Cincinnati and St. Louis Railway Company, the Cleveland, Cincinnati, Chicago and St. Louis Railroad Company, the Baltimore and Ohio Railroad Company, intervenors as respondents.

709. Unreasonable or unjust classification of a commodity is not shown by evidence of lower classification for articles widely dissimilar in the elements of risk, weight, bulk, value, or general character. The proper method of comparison is the classification accorded by the carriers to analogous articles.

710. When an article moves in sufficient volume and the demands of commerce will be better served, it is reasonable to give a lower classification for carloads than that which is applied to less than carload quantities, but the difference in such classification should not be so wide as to be destructive to competition between large and small dealers. Thurber *v.* New York Cent. and H. R. R. Co., 2 Inters. Com. Rep., 742; 3 I. C. C. Rep., 473, cited and reaffirmed. The justice of the claim for a lower rating on carload lots can only be determined upon the facts in each case.

711. When on complaint of a carload shipper unjust discrimination is alleged to result from equal rates on carload and less than carload quantities of the same commodity, the burden of proof is upon the complainant.

712. Upon complaint alleging unjust discrimination against carload shippers of eggs in favor of shippers in less than carloads, it appeared that under the "official classification" eggs take second-class rates for carload or less quantities; that the commodity is carried in refrigerator cars; that for carload shipments ice to the amount of 6,000 pounds is furnished by the carrier without extra charge; that less than carload shipments are taken from local stations in "pick-up" cars to distributing points and forwarded in carloads to New York and other large markets; that notwithstanding the special facilities afforded to small shipments by the carriers the large dealers control 83 per cent of the traffic. *Held*, upon all the facts in the case, that no unjust discrimination results to the carload shipper from the equal rating of carloads and less than carload lots and the special service rendered in gathering and forwarding small shipments, and the complaint should therefore be dismissed.

713. Power of concentrated business interests to force concessions in transportation rates which operate to the disadvantage of the general public discussed.

George Rice *v.* The St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas. (5 I. C. C. Rep., 660.)

George Rice *v.* The Baltimore and Ohio Southwestern Railroad Company and The Columbus, Hocking Valley and Toledo Railway Company.

714. Some of the grievances alleged in the complaint were subsequently removed by defendants as a result of the Commission's order in other cases. The other charges were denied by the defendants in their verified answers, and that denial was fortified by the positive testimony of witnesses. The petitioner did not appear at the hearing, though duly notified thereof, and

offered no proof in support of the information and belief upon which his allegations were made. *Held*, That as to these charges the complaint must be dismissed.

The Tecumseh Celery Company *v.* The Cincinnati, Jackson and Mackinaw Railway Company and the Wabash Railroad Company. (5 I. C. C. Rep., 663.)

715. When a carrier fails to answer a complaint filed under section 13 of the act to regulate commerce the Commission will take such proof of the facts as may be deemed proper and reasonable and make such order thereon as the circumstances of the case appear to require.

716. For that portion of its line over which the Western classification is in force the Wabash road should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and other vegetables enumerated in Class C of that classification, rather than with berries, peaches, grapes, and other fruits specified in Class III thereof, and the defendants should transport celery from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of any of said other vegetables named in Class C aforesaid; and mixed carloads of celery and cauliflower or other vegetables specified in said Class C of the Western classification should be transported by defendants from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of either of said vegetable articles embraced in that class.

The Board of Trade of Troy, Alabama, *v.* The Alabama Midland Railway Company, The Central Railroad and Banking Company of Georgia and H. M. Comer and others, the receivers thereof, The Savannah, Florida and Western Railway Company, The Kansas City, Fort Scott and Gulf Railroad Company, The Kansas City, Memphis and Birmingham Railroad Company, The Louisville and Nashville Railroad Company, The Mobile and Ohio Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, The Western Railway of Alabama, The Missouri Pacific Railway Company, The Wabash Railroad Company, The Sioux City and Pacific Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Illinois Central Railroad Company, The Evansville and Terre Haute Railroad Company, The Jeffersonville, Madison and Indianapolis Railroad Company, The Louisville, New Albany and Chicago Railway Company, The Clyde Steamship Company, The Ocean Steamship Company of Savannah, The Providence and Stonington Steamship Company, The New York and Texas Steamship Company, The Metropolitan Steamship Company, The Citizens' Steamboat Company, The Hartford and New York Transportation Company, The Grand Trunk Railway Company of Canada, The New Haven Steamboat Company, The People's Line Steamers, The Maine Steamship Company, The New York Central and Hudson River Railroad Company, The Central Vermont Railroad Company, The Bridgeport Steamboat Company, The Norwich and New York Transportation Company, The Canadian Pacific Railway Company, The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, The Housatonic Railroad Company, The Central Railroad Company of New Jersey, The Boston and Albany Railroad Company, The Boston and Main Railroad Company, The New York and New England Railroad Company, The Old Colony Railroad Company, The Fitchburg Railroad Company, The Maine Central Railroad Company, The Connecticut River Railroad Company, The Pennsylvania Railroad Company, The Philadelphia and Reading Railroad Company, The Baltimore and Ohio Railroad Company, The Providence and Springfield Railroad Company, The Cheshire Railroad Company, The Concord and Montreal Railroad Company. (6 I. C. C. Rep., 1.)

717. The fact that the property and affairs of a carrier have been placed by a United States court in the hands of a receiver does not affect the jurisdiction of this Commission under a complaint charging such carrier with violations of the act to regulate commerce.

718. The continuity of the carriage of freight over a line formed by two or more roads is not broken in fact and can not be broken in law by the charge of a local rate by one (or more) of such roads as its proportion of the through rate.

719. The successive receipt and forwarding in ordinary course of business by two or more carriers of interstate traffic shipped under through bills for continuous carriage over their lines is assent to a "common arrangement" for such carriage within the meaning of the act to regulate commerce without previous express agreement between them, and the obligations imposed by the statute can not be evaded by the demand of the local charge for the haul over its own road by one or more of such carriers or by the declaration on the part of one or more of said carriers that as to the transportation over its road it is a local and not a through carrier. (Reaffirming the doctrine laid down in Georgia R. Com. *v.* Clyde SS. Co., 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324.)

720. A local rate which presumably is adopted as covering both the initial and final expense of a local haul is *prima facie* excessive as part of a through rate over a through line composed of two or more carriers.

721. Where a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate, the knowledge of the circumstances and conditions (if any) justifying such disproportionate rate being peculiarly in the possession of the carrier, the burden is on the carrier to make proof of such justifying circumstances and conditions.

722. The facts, that one city is much larger and has more important and extensive business interests than another and has been treated by the carriers in making rates to surrounding points as a "trade center" is no justification for a continuation of discriminatory rates in favor of such city. The object of the act to regulate commerce was to eradicate the existing system of rebates and unjust discriminations in favor of particular localities, special enterprises, and favored individuals.

723. Unjust discrimination as between localities or individuals can not in the nature of things be essential to the business prosperity of the carrier, and it is no valid objection to the correction of unlawful rates to one point that it involves a like correction as to other points.

Phelps & Co. *v.* The Texas and Pacific Railway Company. (6 I. C. C. Rep., 36.)

724. The rates which carriers are required by the sixth section of the statute to publish, file, and adhere to without deviation cover not merely the carriage, but services rendered in receiving and delivering property as well.

725. The lien of carriers upon freight for charges earned is satisfied by the payment of rates for their services which they are lawfully entitled to demand, and a guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, can not be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made.

726. The interstate commerce act does not recognize indefinite or uncertain transportation charges; the idea of unequal compensation for like service, or discrimination in the treatment of persons similarly situated, is repugnant to every requirement of that law, and a party to an interstate shipment can not be excluded by the carrier from privileges afforded to other patrons in the same locality because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand.

727. When actual weights of cotton shipments can not be ascertained without great inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee, a practice of billing the cotton at a proper estimated weight per bale should not be deemed unlawful.

728. The retention of an overcharge has all the effect of extortion and unjust discrimination against the person from whom its payment has been required, and when the refund of an excessive charge has been unnecessarily delayed for a considerable period the officials responsible therefor become fairly chargeable with willful intention to violate the law.

The Independent Refiners' Association of Titusville, Pennsylvania, and the Independent Refiners' Association of Oil City, Pennsylvania, *v.* The Pennsylvania Railroad Company and the Western New York and Pennsylvania Railroad Company. (6 I. C. C. Rep., 52.)

729. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed by the Pennsylvania Railroad Company, said defendant was allowed to take testimony by deposition with reference to a particular finding in the report and opinion of the Commission.

The F. Schumacher Milling Company and its successor, the American Cereal Company, *v.* The Chicago, Rock Island and Pacific Railway Company, defendant, and The Chicago, Burlington and Quincy Railroad Company, The Hannibal and St. Joseph Railroad Company, The St. Louis, Keokuk and Northwestern Railroad Company, The Kansas City, St. Joseph and Council Bluffs Railroad Company, The Chicago, Milwaukee and St. Paul Railroad Company, The Atchison, Topeka and Santa Fé Railroad Company, intervenors. (6 I. C. C. Rep., 61.)

730. The fact that different rates and classifications are in force in different sections of the country will not of itself warrant an extension of the lower

rate and classification to the section where the higher rate and classification are applied. There must be proof of unlawful discrimination or disadvantage, or of unreasonably high rates, to procure an order directing changes in classification.

731. Cost of service is only one of the elements to be considered in determining proper classification and relative rates for different articles. While the difference in cost to the carrier in transporting cereal products and flour is not in itself sufficient to warrant a higher classification upon cereal products, these products range higher in value than flour, and in the matter of volume of traffic afforded there is a very wide difference in favor of flour; and there are other conditions compelling a low rate upon flour which do not apply in the transportation of cereal products. It appears, moreover, that the complaining company controls the production of half the cereal products manufactured in this country and, under the present classification and rates, is an active competitor of other manufacturers of cereal products whose mills are located nearer to the points of destination involved in this case.

732. When an article of traffic does not move on account of burdensome rates, and the carrier is hauling a considerable number of empty cars in the direction such article would naturally move if accorded a lower rate, the carrier may be justified in carrying at a rate sufficient to induce the movement of such traffic, provided no extra or additional charge is in consequence put upon other articles carried; but the fact that freight will furnish return loads for empty cars is not a reason for the reduction of rates on such freight when it does not appear that the rates are unreasonable.

733. A mixed carload rate for cereal products, or for cereal products and flour, that would have the effect of throwing out of the trade many competitors of complainant who manufacture only certain kinds of cereal products, and of centralizing the business in the hands of one or more dealers, should not be granted when without it no wrong is done to anyone and the market is open to all competitors. To obtain the abrogation of a rule in a classification denying a mixed carload rate upon specified articles the rule should be shown unreasonable, unfair, or unjustly discriminative.

734. The complaining company has shown no reason why roads using the Western classification should adopt the official classification as to cereal products. Neither is there sufficient evidence in this case to justify an order directing the defendants to establish the mixed carload rate prayed for in the complaint. But this will not preclude the filing of another complaint based on other grounds, and raising the question of unreasonable or relatively unreasonable rates on cereal products.

Blanton Duncan *v.* The Atchison, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, and The Southern California Railroad Company, known as the Santa Fé System. (6 I. C. C. Rep., 85.)

Blanton Duncan *v.* The Southern Pacific Company and The Louisville and Nashville Railroad Company.

735. The remedy of a party for injury to goods shipped resulting from delay, detention, loss, breakage, rotting, or other deterioration or damage not attributable to a violation of any provision of the act to regulate commerce is by appropriate action in the courts.

736. Where a contract is made with a shipper by a carrier, member of a through line, for shipment of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the act to regulate commerce for the delivering carrier to exact payment of the full lawful rate before delivery. Where, however, the shipper did not enter into the contract willfully for the purpose of securing a rate which he knew, or, by the exercise of reasonable diligence, might have known, to be illegal, but was an innocent party to it, and made the shipment on the faith of the rate named, the courts seem inclined to hold (and it is a matter for their determination) that justice to the shipper requires that the goods be delivered on payment by him of the amount specified in the contract.

737. There is no necessary connection or relation between the rates on traffic of the same kind or class transported between the same points in opposite directions over the same road or line, and the fact that such rate in one direction is materially higher than that in the opposite direction does not, as in case of hauls over the same line in the same direction, establish *prima facie* the unreasonableness of the higher rate. This is especially true where the hauls are of great length.

738. The rate charged on "household goods" will not be declared unlawful on the mere fact that as a condition of granting them the defendants require the

shipper to release all claim for damages in case of loss to the amount of $5 per 100 pounds, or $1,000 per carload of 20,000 pounds, there being no proof showing that such rates are unreasonable in view of said limitation. In cases of loss the shipper's remedy is at law, and the question of the reasonableness or validity of a contract limiting the carrier's liability is to be determined in the courts on the facts in each case.

739. Unless within the authorized exceptions to the general rule of the statute, discriminations in charges upon like shipments of the same commodities based solely upon the purpose or "business motive" of the shipper are unlawful, whether effected directly or indirectly by methods of classification.

740. Under the Western classification and tariff there are two west-bound carload rates from Mississippi River points to Pacific coast terminals on goods termed "emigrants' movables" (including "household goods"), one a general class rate and the other designated a "commodity" rate, and less than the general rate; the latter rate is published as being open to "intending settlers only," but in practice it is given to shippers indiscriminately, and does not appear to be unreasonable in itself. *Held*, (1) That there is neither propriety in, nor necessity for, retaining in the classification and tariff either the two rates or the statement in connection with the commodity rate that it is open to "intending settlers only," as their intention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers; (2) that the west-bound rate on "emigrants' movables" (including "household goods") from Louisville to Los Angeles should not be in excess of the amount of said commodity rate thereon.

741. While the circumstances and conditions in respect to the work done by the carrier and the revenue earned are dissimilar in the transportation of freights in carloads and less than carloads, and a lower rate on carloads than on less than carloads is therefore not in contravention of the statute, yet the difference between the two rates must be *reasonable*.

742. The agreement of the Transcontinental Association on file with the Commission is not on its face a "contract or agreement or combination" for the "pooling of freights" or "division of earnings" between different and competing railroads such as is declared unlawful by section 5 of the act to regulate commerce.

Thos. V. Cator *v.* The Southern Pacific Company and The Union Pacific Railway Company. (6 I. C. C. Rep., 113.)

743. Under the statute the defendants had a legal right to withhold or put into effect an open excursion rate to Omaha, and such right was not affected by the fact that open excursion rates, lower than regular rates of fare, had been in force over their connecting roads during the month previous. Comparison of the rates charged to complainant and others in July for transportation from San Francisco to Omaha and return with reduced excursion rates charged for the transportation of persons from San Francisco to Chicago and Minneapolis in June of the same year does not of itself present a discrimination or preference which the act to regulate commerce empowers this Commission to correct.

C. O. Morrell, complainant, *v.* The Union Pacific Railway Company, The Oregon Short Line and Utah Northern Railway Company, The Oregon Railway and Navigation Company, defendants. (6 I. C. C. Rep., 121.)

744. Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other localities where the expense of operating a road and other conditions affecting transportation are widely different.

745. Rates and charges in force on lines of rival companies or on different branches or lines of the same company are entitled to consideration in connection with the question of reasonable charges for transportation services rendered under like conditions.

A. S. Newland, T. W. Hauschild, Walter Reeder, complainants, *v.* The Northern Pacific Railroad Company, The Union Pacific Railway Company, The Oregon Short Line and Utah Northern Railway Company, The Oregon Railway and Navigation Company. (6 I. C. C. Rep., 131.)

746. It is the right of shippers to have their goods carried and the duty of common carriers to receive and forward freights by the least expensive routes at reasonable through rates.

747. Where there were two routes from the place of shipment to the place of destination, one much longer and much more expensive to operate than the other, the longer and more expensive being operated by one, while the more direct

and less expensive route was over continuous lines operated by more than one common carrier: *Held*, That the rate must be reasonable for the transportation by the shorter and less expensive route.

748. Where the roads and branches of two companies extend to and penetrate a wheat-producing district, from which they make a joint rate for distances of 480 miles, and each company makes the same rate separately from the same district, one for distances of 450 and the other for distances of 650 miles over their respective lines to the same destination: *Held*, That it may be fairly assumed that the rates so jointly and separately made are reasonably remunerative and profitable: *Held further*, That what is reasonable compensation for this longer and more expensive branch-line service is excessive for the shorter distance of 311 miles over a less expensive route from the same district to the same destination.

749. The same rate over a district so extensive denies to the producer nearer the market the advantages of his location, for which he receives no compensation in the fact that such rate was established to enable a railroad company to sell its lands more distant from markets at better prices.

750. The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances, and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial.

751. That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficiently large for a fair return on actual expenditure.

752. Where the market price yields but a scant return for the labor and expense of production, the cost of transportation needs to be as moderate as may be consistent with justice to the carrier.

753. Where a road or system of roads leased and made the road of another company a part of a system: *Held*, That the agreed rental can not be accepted as the amount which the leased property must earn and the lessee may retain before any reduction can be made in the rates over the leased lines.

754. Where two companies or railroad systems stipulated for a division of traffic and agreed that when one party carried traffic belonging to the other but one-half of the charges should be retained for the transportation service: *Held*, That in the light of this arrangement in connection with the other facts of the case some reduction was warranted.

Alanson S. Page, Cadwell B. Benson, and Charles Tremain, complainants, *v.* The Delaware, Lackawanna and Western Railroad Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company, defendants. (6 I. C. C. Rep., 148.)

755. Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he, with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is the duty of the Commission to execute and enforce the statutory provisions applicable thereto.

756. Upon consideration of the great reduction which has taken place in the value of window shades, the arbitrary increase of shade classification by the carriers during the progress of this proceeding, and all the other facts and circumstances herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity: *Held*, That the classification of window shades as first class in the Official Classification has become unjust, and that the legal duty of defendants to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry requires them to reduce their classification of window shades to the class which, under the Official Classification, is now applied to "window hollands and shade cloth, plain, uncut, and undecorated."

Rhode Island Egg and Butter Company, The W. W. Whipple Company, George M. Griffin *v.* The Lake Shore and Michigan Southern Railway Company, Michigan Central Railroad Company, New York Central and Hudson River Railroad Company, Boston and Albany Railroad Company, New York, New Haven and Hartford Railroad Company. (6 I. C. C. Rep., 176.)

757. A shipper should not be subjected to unnecessary restrictions as to the kind of case or package he shall use.

758. A rate which may be reasonable when applied to the transportation of egg cases as a disconnected service may be unreasonable if the carriage of returned cases at favorable rates is in fact a special service, the discontinuance of which would unduly burden the business of shipping eggs to points of sale.

759. Upon complaint of unreasonable classification and rating on returned empty egg cases from Providence, R. I., to Chicago, Ill., Burlington, Iowa, and other Western points: *Held*, That the evidence presented is insufficient to enable the Commission to determine the question. *Held further*, That the defendants and other carriers concerned should be allowed time to consider whether shippers generally are not unduly prejudiced by the increased rating complained of, and take or refrain from taking action accordingly, and if the carriers fail to take satisfactory action, that the complainants and any other interested shipper or consignee should have leave, after a specified time, to ask to have the case reopened; and thereupon such other direction be given as will serve to bring in necessary parties defendant, by amended or supplemental complaint or otherwise, as may appear to be required.

The Freight Bureau of the Cincinnati Chamber of Commerce *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company *et al.* (6 I. C. C. Rep., 195.)

The Chicago Freight Bureau *v.* The Louisville, New Albany and Chicago Railway Company *et al.*

760. If railway companies engaged in the transportation of traffic from one territory voluntarily enter into an association with railway companies engaged in the transportation of similar traffic from another territory to a common market, for the purpose, among others, of a mutual adjustment of rates over their respective lines, and in pursuance of this purpose as members of such association agree to and maintain rates over their own lines higher than are reasonable, and the relation thus established between the rates from the two territories, respectively, is unjustly prejudicial to the former and unduly preferential to the latter, this is a violation of the first paragraph of section 3 of the act to regulate commerce, for which, whether or not there be a joint liability under said act of the two systems of carriers, there is at least a several liability on the part of those serving the territory injuriously affected.

761. Where the reasonableness of rates is in question, comparison thereof may be made, not only with rates on another line of the same carrier, but also with those on the lines of other and distinct carriers—the value of the comparison being dependent in all cases upon the degree of similarity of the circumstances and conditions attending the transportation for which the rates compared are charged.

762. The influence of water competition via the Atlantic on rail rates from Northeastern cities to Southern territory is not so great, as appears by the proof in these cases, as to account for or justify the difference between the mileage rates from those cities and the mileage rates from Chicago and Cincinnati to such territory under the rates complained of, and the fact of that influence on rates from the former cities can not be invoked as a justification of rates from the latter, which, after due allowance for such influence as a substantially dissimilar circumstance, still appear on comparison of the two sets of rates to be unduly preferential to the former and unjustly discriminative against the latter. In rates from different territories to a common market "relative equality is necessary in the degree of the similarity" of circumstances and conditions attending the transportation in the two cases.

763. The fact which is made to appear in these cases, that rates on traffic of the numbered classes from Chicago and Cincinnati to Southern territory are made higher than they otherwise would be for the purpose of securing to the lines from Northeastern cities the transportation of that traffic from the territory set apart to them under the Southern Railway and Steamship Association agreement, itself raises a *prima facie* presumption of the unreasonableness of those rates.

764. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages, and no departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to maintain existing trade relations, or to "protect competing markets," or to "equalize commercial conditions," or to secure to carriers traffic from certain territory assumed to be exclusively theirs.

765. The division of territory between the Eastern and Western lines, provided for in the Southern Railway and Steamship Association agreement, is without warrant in law and appears to be made for the benefit of the carriers without regard to the interest of shippers in the territory so divided, to whom it is in effect a denial of the privilege of shipping their goods or produce to market by the line or route they may prefer.

766. The "fines" or "penalties" imposed by the provisions of the agreement of the Southern Railway and Steamship Association on members for violation of association rules appear on the face of that agreement to be available as substitutes for payments which would be exacted under a regular pooling system, and the arrangement under which they are imposed is tantamount to a combination, contract, or agreement "for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof," which are forbidden by the statute.

767. The requirement of the agreement of the Southern Railway and Steamship Association that its members apply "full local rates upon all traffic subject to the association agreement coming from or going to" connecting lines which do not maintain association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, is repugnant to that clause of section 3 of the act to regulate commerce which forbids carriers to "discriminate in their rates and charges between connecting lines."

H. W. Behlmer *v.* The Memphis and Charleston Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, The Georgia Railroad and Banking Company, The South Carolina Railway Company; Henry Fink and Charles M. McGhee, as receivers of The East Tennessee, Virginia and Georgia Railway Company and The Memphis and Charleston Railroad Company; Daniel H. Chamberlain, as receiver of The South Carolina Railway Company; The Central Railroad and Banking Company of Georgia and The Louisville and Nashville Railroad Company, as lessees of The Georgia Railroad, and H. M. Comer, as receiver of The Central Railroad and Banking Company of Georgia. (6 I. C. C. Rep., 257.)

768. The competition of markets or the competition of carrying lines subject to regulation under the act to regulate commerce does not justify carriers in making greater short-haul or lower long-haul charges over the line in the same direction (the shorter being included within the longer distance) in the absence of an order of relief issued by the Commission upon application therefor and after investigation.

769. When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for a shorter haul, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor.

770. The construction of the fourth section of the act to regulate commerce as laid down in James & M. Buggy Company *v.* Cincinnati, N. O. & T. P. R. Co., 3 Inters. Com. Rep., 682; 4 I. C. C. Rep., 744, and Ga. R. R. Com. *v.* Clyde S. S. Co., 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324, followed in Chattanooga Board of Trade *v.* East Tennessee, V. & G. R. Co., 4 Inters. Com. Rep., 213; 5 I. C. C. Rep., 546, explained in Gerke Brew. Co. *v.* Louisville & N. R. Co., 4 Inters. Com. Rep., 267; 5 I. C. C. Rep., 596, and sustained in interstate Commerce Com. *v.* Cincinnati, N. O. & T. P. R. Co. (not yet reported), reaffirmed.

771. Defendants ordered to cease and desist from making higher aggregate charges on hay and other commodities carried under similar circumstances and conditions over their connected roads from Memphis, Tenn., to Summerville, S. C., than they charge for carrying said commodities for the longer distance from Memphis over said connecting line through Summerville to Charleston, S. C., without prejudice to defendants' right to apply to the Commission for relief under the proviso clause of the fourth section.

In the matter of the Form and Contents of Rate Schedules, and the Authority for Making and Filing Joint Tariffs. (6 I. C. C. Rep., 267.)

772. The Commission having under consideration the rate sheets, schedules, and joint tariffs which, under the sixth section of the act to regulate commerce, are required to be filed in its office and to be kept open to public inspection, and having discussed the subject with a large number of traffic officials, who for that purpose met the Commission in response to its invitation; and

having, as the result of such conference, made and filed the foregoing report and opinion; and being convinced that the directions contained in the pamphlet published December 1, 1891, should be complied with, in order to bring such rate sheets, schedules, and joint tariffs into conformity with the statute, and to correct the defects and omissions which are observed in such publications; and having found and decided among other things that evidence of authority for making and filing joint tariffs should in all cases be furnished to the Commission:

It is ordered, That all common carriers subject to the act to regulate commerce shall, in all future issues of their rate sheets, schedules, and joint tariffs, including all future amendments and supplements to existing joint tariffs, comply with and conform to the general rules laid down in said pamphlet of December 1, 1891, as modified by this order.

It is further ordered, That all joint tariffs hereafter filed, and all future amendments and supplements to existing joint tariffs, be hereafter so arranged and printed as to show distinctly the names of the several parties thereto.

And it is further ordered, That all common carriers subject to the act which shall hereafter be named as parties to any joint tariff filed and published by another carrier, or as parties to any amendments or supplements to existing joint tariffs, shall forthwith upon the publication thereof file with the Commission a statement or certificate showing their acceptance of and concurrence therein and making themselves parties thereto, which said statement or certificate shall be substantially in the following form:

To the Interstate Commerce Commission, Washington, D. C.:

This is to certify that the ——— Company assents to and concurs in the publication and filing of the schedule described below, and hereby makes itself a party thereto.

Dated ———.

DESCRIPTION OF SCHEDULE.

Kind.	Number.	Date of issue.	Date effective.	Issued by (name of road).
Tariff				
Supplement				
Amendment				
Circular				
Classification				

(Sign) ———.

———.

———.

In the matter of the petition of the Cincinnati, Hamilton and Dayton Railroad Company for relief from the operation of the fourth section of the act to regulate commerce. (6 I. C. C. Rep., 323.)

773. Under the proviso to the fourth section of the act to regulate commerce it is left to the Commission, in the exercise of a reasonable and lawful discretion, to determine the description or exceptional character of the "special cases" in which the Commission may, after investigation, authorize common carriers to charge less for longer than for shorter distances, and the extent to which such carrier may be relieved from the operation of this section of the act.

774. The exceptional and special nature of the cases in which such discretion may be exercised renders the application of any general rule impracticable, and every special case must be determined upon its own facts and special circumstances and in view of the objects for which the law was enacted.

775. Additional transportation facilities and accommodations for passengers traveling to Chicago and return during the World's Fair are shown to be necessary to the convenience and safety of travelers. The petitioner has made provision for increased facilities by establishing a new route which can only be utilized by the acceptance of a lower rate from a longer distance point, and such acceptance without relief from the operation of the fourth section of the act will compel the reduction of rates which are reasonable from shorter distance points: *Held,* To secure additional guaranties for the safety and convenience of the public under conditions like these is believed to be in accordance with the spirit and purpose of the act to regulate commerce, and the relief from the operation of the 4th section of the act will be granted.

In the matter of the application of the Rome, Watertown and Ogdensburg Railroad Company for relief from the operation of the fourth section of the act to regulate commerce. (6 I. C. C. Rep., 328.)

776. The established rate for carrying passengers from Ogdensburg and points east of Richland on the Rome, Watertown and Ogdensburg Railroad to Chicago and return had previously been $36.00, or $18.00 each way. After the opening of the World's Fair the Canadian roads established an excursion rate from the points above referred to to Chicago and return of $24.00. The Rome, Watertown and Ogdensburg Railroad Company and its connections established an excursion World's Fair rate to Chicago and return of $25.75, which was reasonable, from shorter distance points south of Richland, including Syracuse, N. Y. The largely increased travel during the Chicago exposition required the use of all routes of transportation for the greater safety and convenience of visitors. On application of the Rome, Watertown and Ogdensburg Railroad Company to be relieved from the operation of the 4th section of the act, relief was granted, and the petitioner was authorized during the continuance of the World's Fair to accept $24.00 to Chicago and return, the rate established by its competitors, the Canadian roads, without reducing its greater charge of $25.75 to shorter distance points, including Syracuse.

The Southern Paint and Glass Company, The Tripod Paint Company, F. W. Hart Sash and Door Company, Lamar & Rankin Drug Company, Fulton Lumber Company, F. J. Cooledge & Brother, and W. S. McNeal *v.* The Lake Erie and Western Railroad Company, The Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, The Louisville and Nashville Railroad Company, and The Nashville, Chattanooga and St. Louis Railway Company, lessees of the Western and Atlantic Railroad. (6 I. C. C. Rep., 284.)

The Southern Paint and Glass Company, The Tripod Paint Company, The F. W. Hart Sash and Door Company, Lamar & Rankin Drug Company, The Fulton Lumber Company, F. J. Cooledge & Brother, and W. S. McNeal *v.* The Baltimore and Ohio Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, and the East Tennessee, Virginia and Georgia Railway Company.

777. It appearing that the discriminations and preferences complained of in these proceedings would be removed through compliance, by carriers operating in the same territory, with the decision and order of the Commission in other cases (The Chicago and Cincinnati Freight Bureaus cases, 4 Inter. Com. Rep., 592; 6 I. C. C. Rep., 195), and that suits are pending in the courts for the enforcement of such order, the proceedings herein were stayed until final determination by the courts in such other cases.

Edgar W. Emerson *v.* The Chicago, Rock Island and Pacific Railway Company.

Edgar W. Emerson *v.* The Chicago and Northwestern Railway Company. (6 I. C. C. Rep., 289.)

778. Unjust discrimination in allowance of reduced rates to ministers of religion was alleged in these cases, but the complainant failed to show that he had made proper application for the reduced rate, or that such an application would have been refused by either of the defendants, and upon these grounds the complaints were dismissed.

In the matter of the application of The Fremont, Elkhorn and Missouri Valley Railroad Company, The Sioux City and Pacific Railroad Company, and The Chicago and Northwestern Railway Company to be relieved from the operation of section four of the act to regulate commerce. (6 I. C. C. Rep., 293.)

779. Upon application by carriers to be relieved from the operation of section four of the act as to the transportation of grain and feed over their lines on the ground that through failure of crops the people of the longer distance localities were in a measure destitute and without necessary food for themselves and animals, a temporary order of relief was granted.

The Truck Farmers' Association of Charleston and vicinity *v.* The Northeastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Washington Southern Railroad Company, The Baltimore and Potomac Railroad Company, and The Pennsylvania Railroad Company, constituting the Atlantic Coast Despatch Line and

the South Atlantic Coast Despatch Line, and The South Carolina Railway Company, and D. H. Chamberlain, receiver thereof, and the Richmond and Danville Railroad Company, and F. W. Huidecoper and Reuben Foster, receivers thereof. (6 I. C. C. Rep., 295.)

780. Where on shipments of strawberries and vegetables from Charleston destined for New York delivery is made by the roads at the terminus of the rail line in Jersey City, in computing the total cost of transportation to New York the expense of carriage over from Jersey City is to be added to the rate charged to that point.

781. In case of a change of delivery of such shipments from New York to Jersey City and the maintenance after the change of the same rates to the latter as had been in force to the former city for a series of years preceding the change, the carriers are charging for a less service the compensation which they had presumably deemed adequate for a greater, and the rates as applied to Jersey City are *prima facie* excessive.

782. Where a carrier pays mileage for a car which it employs in the service of shippers, it is the carrier and not the party or company from whom the car is rented who furnishes the car to the shipper, and in such case there is no privity of contract between the car owner and the shipper.

783. It is the duty of the carrier to furnish an adequate and suitable car equipment for all the business it undertakes, and also whatever is *essential* to the safety and preservation of the traffic in transit.

784. When carriers undertake the transportation of perishable traffic requiring refrigeration in transit, ice and the facilities for its transportation in connection with that traffic are incidental to the service of transportation, and the charge therefor is a charge "*in connection with*" such service within the meaning of section 1 of the act to regulate commerce, in respect to the reasonableness of which the carrier is subject to that provision of the statute:

785. *Held*, under the evidence in this case, (1) That on shipments of strawberries from Charleston to Jersey City the charge of 2 cents per quart for refrigeration en route is excessive; that the charge therefor should not exceed 1½ cents, and that the total charge per quart for the service of transportation on such shipments and necessary services "*in connection therewith*," including refrigeration, should not be in excess of 6 cents per quart; (2) that 1.5 cents per package should be deducted from the rate on vegetables shipped in standard barrels or barrel crates from Charleston to Jersey City in cases where the delivery of such vegetables has been changed from New York to Jersey City without a change in rates, and (3) that the rate on cabbages shipped in standard barrels or barrel crates from Charleston to Jersey City or New York should not exceed ⅔ of the rate on potatoes so shipped.

In the matter of the application of the Southern Railway Company for relief from the operation of the fourth section of the act to regulate commerce.

786. Upon application of the Southern Railway Company for relief from the operation of the fourth section, so that it may charge less for longer than for shorter distances for the transportation of passengers to and from various points on its lines, and upon a showing of peculiar rail and water competition making rates to competitive points on a very considerable volume of passenger traffic so low as to afford insufficient revenue to the applying all-rail carrier, having a route more direct and therefore more convenient to the public, unless permitted to charge higher reasonable rates to intermediate stations, a temporary order, specifying the extent of relief, was granted.

In the matter of the application of The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railroad Company, The Union Pacific Railway Company, The Rio Grande Western Railway Company, and the Denver and Rio Grande Railroad Company for relief from the operation of the fourth section of the act to regulate commerce.

787. Upon application for relief from the operation of the fourth section, so as to permit the applying carriers and their connections to charge less for the transportation of oranges over their lines from California points to Atlantic seaboard ports than for shorter distances over the same line in the same direction, and upon a showing of market and water competition in the supply and transportation of oranges from foreign countries so severe as to preclude the California product, under rail rates ordinarily reasonable, from being marketed on the Atlantic seaboard, and of failure of the Florida orange crop, an order granting such relief for the period of sixty days was granted.

The Michigan Box Company *v.* The Flint and Pere Marquette Railroad Company, The Michigan Central Railroad Company, The Lake Shore and Michigan Southern Railway Company, The Canada Southern Railway Company, and the Chicago and Grand Trunk Railway. (6 I. C. C. Rep., 335.)

788. The railroad companies named as defendants established and maintained a rate of 15 cents per hundred pounds on box shooks and a lower rate of 12 cents per hundred pounds on lumber, laths, and shingles carried from Bay City, Michigan, to Buffalo, Black Rock, Tonawanda, and Suspension Bridge, New York. A carload of lumber weighs about 36,000 pounds; a carload of box shooks or shingles weighs about 30,000 pounds. Lumber carried in carloads is worth from $350 to $800 per car; a carload of box shooks is worth about $220. The freight charges on both lumber and box shooks are about $43, and on shingles about $36 per carload. The rates on these several products are the same from Bay City to Cleveland and ports on Lake Erie other than Buffalo, and to points in Illinois, Indiana, Ohio, and other States. *Held*, That the higher rate on box shooks was not justified, and was excessive.

789. After complaint and investigation, but before decision by the Commission, the carriers complained against the reduced rate to the extent that it was alleged to be excessive. *Held*, That any order in respect of the rate of charges is unnecessary, now that they are no longer excessive.

790. Where reparation is asked to the extent of alleged excessive charges, the allegation being sustained, reasonable time will be allowed for making proof of amounts paid when the evidence produced shows excessive payments without disclosing the amount of excess.

S. J. Hill & Bro. *v.* Nashville, Chattanooga and St. Louis Railway Company, Western and Atlantic Railroad Company, East Tennessee, Virginia and Georgia Railway Company, Georgia Southern and Florida Railroad Company, Louisville and Nashville Railroad Company, and Savannah, Americus and Montgomery Railway Company. (6 I. C. C. Rep., 343.)

791. The competitive and basing point system under which railroad companies operating in the Southern Railway and Steamship Association territory elect distributing centers and competing points reviewed, again condemned, and found to result in unreasonable and unlawful rates to points classed as local, and give favored business rivals unreasonable advantage.

792. In the absence of other influential conditions distance may be fairly considered a controlling element in fixing reasonable rates. The distance being in favor of one of two competing points, and neither the cost, the value of the service, nor other conditions of transportation in favor of the other, the shorter distance point can not be justly denied at least equal rates with the longer:

793. *Held*, on the facts in this case, That any higher rate from Nashville, Tenn., to Cordele, Ga., than to Albany and Americus, Ga., is unreasonable and unduly prejudicial to complainants.

794. Where carriers form an indirect line over which they transport freight and charge and receive greater compensation in the aggregate for a shorter than for a longer distance, the shorter being included within the longer: *Held*, To be unlawful and in conflict with section 4 of the act to regulate commerce: and, *Held further*, The fact that a more direct line, over which the mileage to a longer distance point (Macon or Americus) by the indirect line is less than the mileage to a shorter distance point (Cordele) by such indirect line, may be or is formed and used in transporting grain to or from such longer distance point (Macon or Americus) does not alter or so change the conditions of transportation over the indirect line as to take it out of the rule of the statute.

Cordele Machine Shop *v.* Louisville and Nashville Railroad Company and Savannah, Americus and Montgomery Railway Company. (6 I. C. C. Rep., 361.)

795. While carriers operating shorter lines have the advantage, both in making rates and in carrying under them, they can not dictate a system of charges which the operators of longer lines may not change as to their own roads, though it may be true as a rule, and as claimed by defendants, that, to get business, longer lines must take it as low as rates at the time in force over more direct routes.

796. The fourth section of the act to regulate commerce cuts off any presumption in favor of as great compensation for short as for long distances, and is based on the assumption that ordinarily a higher charge for a shorter distance is discriminating and excessive.

797. The Louisville and Nashville Railroad Company and the Savannah, Americus and Montgomery Railway Company, the defendants, unite in a joint tariff over their lines from Birmingham, Ala., to Cordele, Ga., and connecting at

Cordele with the Georgia Southern and Florida Railway Company, the three companies form a line and join in a tariff through to Macon: *Held*, That the two companies first named may lawfully accept less for their haul to Cordele as a part of the through rate to Macon than they might lawfully charge for the haul to Cordele for local delivery; but when the defendants carry a ton of pig iron to Cordele destined to Macon, and receive for their share of the through tariff $1.45, and when they carry it to Cordele for complainant they charge $3.69, this charge is exorbitant and unduly prejudicial to complainant.

798. The system of rate making, under which a comparatively few places arbitrarily selected are designated competitive points, or basing points, and given preferential rates, while adjacent and less distant points are classed as local and made to pay very much higher rates, is at variance with all the equality provisions of the act to regulate commerce, including that which requires all rates to be reasonable and just. In this case it results in rates to Cordele which are unreasonable and unlawful, prejudicial to complainant, and gives its more favored rivals in Macon, Albany, and Americus unreasonable advantages.

The Independent Refiners' Association of Titusville, Pennsylvania, and The Independent Refiners' Association of Oil City, Pennsylvania, *v.* The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, The Delaware and Hudson Canal Company, The Fitchburg Railroad Company, and The Boston and Maine Railroad Company.

The Independent Refiners' Association of Titusville, Pennsylvania, and The Independent Refiners' Association of Oil City, Pennsylvania, *v.* The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, and the Lehigh Valley Railroad Company. (6 I. C. C. Rep., 378.)

799. On failure of the defendant common carriers to cease charging for the transportation over their respective roads of barrel packages containing oil shipped from points in western Pennsylvania to New York Harbor points and Boston and Boston points, or, as an alternative, promptly furnish tank cars to shippers of oil between said points, and to file and publish tariffs accordingly, and to make reparation to injured parties legally entitled thereto by refunding all sums received for carrying barrel packages containing oil shipped between said points when the use of tank cars for such shipments had not been open to shippers impartially, and shippers had been thereby deprived of their use, all of which was required of defendants by order entered in these cases on November 14, 1892, and upon the filing of itemized claims for reparation, due hearing of the claimants and defendants, and full investigation of the matters involved: *Held*, That the claims for reparation served upon defendant initial carriers by claimants, according to a stipulation entered into by the parties, are the claims to be considered in these cases; that the parties legally entitled to reparation under said order of November 14, 1892, are oil shippers from Titusville, Oil City, and vicinity who were members of the complaining associations at the time the complaints were filed, or subsequently, up to the date of the hearing at Titusville on May 15, 1894; that the time which the claims herein may properly cover is from September 3, 1888, when the practice of charging for carrying barrels containg oil was commenced by defendants, to May 15, 1894, when hearing on the claims was had; that the shipments as to which reparation should be made are those from Titusville, Oil City, or vicinity to New York or New York Harbor points, or Boston or points taking the Boston rate, that passed over routes in which some one of the defendants was the carrier receiving the freight for transportation, initiating and controlling the method or mode of carriage and billing the freight through to destination at the aggregate rates of compensation charged; that the amount to be refunded is the charge collected by defendants for the transportation of barrels containing petroleum oil shipped and carried as aforesaid; that the defendants are severally liable for the full amount of damages proved in these cases to result from violation in which they or either of them participated.

800. The specific provision in the law for individual liability of carriers for the full amount of damages sustained through enforced payment of excessive transportation charges or other practices condemned in the statute makes it unnecessary that all the carriers over any particular route shall be before the Commission to enable it to direct reparation for wrongs which have been inflicted upon shippers under any such charge or practice.

801. Receivers of railroad companies are common carriers, subject to the prohibitions and requirements of and to regulation under the act to regulate commerce.

802. Where connecting carriers make a through route and establish through rates which apply as single charges for the whole service, they hold themselves out as carriers over such route at such rates, and must be prepared to furnish suitable "instrumentalities of shipment and carriage," so that the transportation may be conducted without wrong or injustice to those who desire to use the through line.

803. The mere circumstance that the Boston and Maine received a share of the total through charge which was equal to its individually established rate from Boston to the points of destination is altogether insufficient to make these shipments take on a purely local character over the Boston and Maine; and if the shipments were not in all essential respects local from Boston to the destination points, then they were through shipments over the through line of the connecting carriers, and must be so treated.

804. It appearing that the wrongs found to exist in these cases resulted from unequal conditions of carriage and shipment imposed by the defendants antecedent to the time of shipment; that the movement of the property depended upon the shipper's acceptance of conditions thus notified to him in advance; that he had to regulate his price for oil accordingly, and that the cost of transportation was borne by the claiming shippers: *Held*, That it is not material whether the claimants, who are all shippers, or whether the consignees paid the transportation charges: *Held, further*, That the violations of law found in these cases do not arise through any breach of contract, but from failure on the part of carriers to perform their public duties.

805. The Lehigh Valley Railroad Company, a common carrier, subject to the provisions of the act to regulate commerce, could not, by leasing its road, free itself from liabilities for practices made illegal by that statute; nor, after resuming operations of its property, pending proceedings against it to enforce statutory provisions so violated, and to recover damages for injuries sustained under such violations, can it claim exemption from liability during the time of the lease.

806. Shippers whose claims may be covered by the order entered herein on November 14, 1892, but which have not been served in these reparation proceedings, are, upon failure of defendants to make proper refund of excessive charges, entitled to proceed upon the basis of reparation prescribed in said order, to enforce their claims in the courts as provided by law.

The Independent Refiners' Association, of Titusville, Pennsylvania, and The Independent Refiners' Association, of Oil City, Pennsylvania, *v.* The Pennsylvania Railroad Company and The Western New York and Pennsylvania Railroad Company. (6 I. C. C. Rep., 449.)

807. Upon supplemental hearing a finding of fact in the report filed herein on November 14, 1892, and applying to the defendent, The Pennsylvania Railroad Company, is changed so as to appear as a summary of certain evidence.

808. It appearing that defendants are and have been able to furnish a large number of tank cars for the shipment of petroleum oil, and that defendants' liability to make reparation to claimants in this case under the order of the Commission of November 14, 1892, depends upon whether the use of tank cars for shipments of oil over the defendant roads, or by the "Green Line," has been open to the claimants, or, if so, whether the delivering carrier made this privilege useless to claimants through discriminating exactions imposed at the terminal point; and, it also appearing that the claims in this case require separate investigation, and that the present record does not enable the Commission to determine whether any of such claims are supported by facts as would bring them within the terms of the order of November 14, 1892: *Held*, That claimants' further remedy is by proceeding in the courts under section 16 of the act to regulate commerce.

Rice, Robinson and Witherop *v.* The Western New York and Pennsylvania Railroad Company. (6 I. C. C. Rep., 455.)

809. Complainants having filed a petition for reparation long after decision by the Commission and compliance therewith by the defendant carrier: *Held* (1), That the case will not be reopened in a supplementary proceeding, which is only brought to secure reparation, for the purpose of ruling upon questions not decided in the original case; (2) that as to the reparation demanded for injuries which resulted from practices found unlawful in said decision, it would be unwise and unjust to amend a final order entered several years ago and promptly obeyed by the defendant carrier so as to subject such carrier to further requirements in favor of complainants in respect of violations corrected under said order.

E. J. Daniels *v.* The Chicago, Rock Island and Pacific Railway Company, The Burlington, Cedar Rapids and Northern Railway Company, The Sioux City and Northern Railroad Company, and the Chicago, Milwaukee and St. Paul Railway Company. (6 I. C. C. Rep., 458.)

E. J. Daniels *v.* The Great Northern Railway Company, The Sioux City and Northern Railroad Company, and The Chicago, Milwaukee and St. Paul Railway Company.

810. The word "line" as used in the statute means a physical line, not a mere business arrangement; and carriers are prohibited from charging through rates on traffic over a line formed by connection of two or more roads which are less, as a whole, than the rates in force on like traffic carried under similar conditions in the same direction over either of the constituent roads in such line.

811. While the share which a carrier receives out of a joint or through rate over a line of which its road is a part is not necessarily the measure of reasonable rates by such carrier for a similar length of haul over its own road, it is proper in any case under the statute to use the aggregate joint or through rate in force over such line as a basis of comparison in determining the legality of rates charged by such carrier over its own road.

812. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," as used in the statute, imply comparison of relative locations, of natural and acquired advantages, of the reasonableness of charges *per se* and in their relation to other rates on the various lines which serve competing localities, and consideration of all the facts and circumstances which affect rates to different communities.

813. As through traffic from the Atlantic Seaboard to Sioux City and Sioux Falls is subjected to the same charges for the haul from Chicago or Duluth as traffic shipped locally from those places to either destination, and as rates from Eastern points to Chicago or Duluth do not, in any controlling degree, affect the present controversy and are not assailed by the complainant, it was unnecessary to make the Eastern carriers parties to this proceeding.

814. Complaints, though brought in the name of an individual, may challenge the entire schedule of rates to competing towns, and such cases, as distinguished from those involving individual grievances only, are peculiarly public in their nature, since they embrace in one proceeding the various business and industrial interests centered in cities and towns, as those interests may be affected by the charges of public carriers whose facilities are employed in the interchange of commerce.

815. The law requires regulation of railroad charges according to the ascertained rights of persons and places; it is not an agency for the regulation of trade by enabling shippers and communities to do business, or putting them on even terms with rivals more remote from competitive territory. Therefore the fact that one town is able, under existing rates to and from that point, to compete with another town on practically even charges for the aggregate in and out transportation, can not be regarded as an excuse for any injustice in the rates to the former town; the rates to the two competing towns should accord with their relative situation.

816. Ordinarily, the rate per ton per mile diminishes with increasing length of haul, and it does not follow that Sioux Falls rates from Chicago should be 108 per cent of Sioux City rates because the short line distance from Chicago to Sioux Falls is 108 per cent of the short line distance to Sioux City.

817. A given relation in rates between competing towns, fairly equitable at the time of its adoption, may become, through business development and other changes in conditions, severely prejudicial to the town taking the higher schedule; and this is especially liable to occur when additional lines of communication have been opened up to the latter locality, all the roads reaching that point agree to continue the old relation of rates to such points, notwithstanding its improved situation. Agreements between carriers, though designed to secure the orderly and lawful operation of the roads, can not be permitted to fasten upon neighboring localities a relation of rates which is unnatural or unjust. The "basing point" method of rate making, to the extent it is now employed, believed to be unnecessary to an adequate scheme of tariff construction.

818. Where carriers have maintained for a considerable period a relation of rates affecting an extensive territory, though somewhat more favorable to one community therein than appears to be justified, and commercial conditions there and elsewhere have become measurably dependent upon the continuance of that relation, it would ordinarily be inexpedient to increase rates

at that point as the means of correcting relative injustice to another locality; in such case the only practicable remedy is to reduce the rates to the injured town.

819. The relative equality enjoined by the statute requires substantial modification of the present disparity in rates from Chicago to Sioux City and Sioux Falls, and under present conditions such disparity in rates from Duluth to Sioux City and Sioux Falls should be discontinued.

The Colorado Fuel and Iron Company *v.* The Southern Pacific Company; The Atchison, Topeka and Santa Fe Railroad Company; The Atlantic and Pacific Railroad Company; The Colorado Midland Railroad Company; The St. Louis and San Francisco Railway Company, and Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of said The Atchison, Topeka and Santa Fe Railroad Company; The Atlantic and Pacific Railroad Company, and the St. Louis and San Francisco Railway Company; The Burlington and Missouri River Railroad in Nebraska; The Chicago, Rock Island and Pacific Railway Company; The Denver and Rio Grande Railroad Company; The Missouri Pacific Railway Company; The Oregon and California Railroad Company; The Rio Grande Western Railway Company; The Southern California Railway Company; The Texas and Pacific Railway Company; The Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers thereof; The Union Pacific, Denver and Gulf Railway Company, and Frank Trumbull, Receiver thereof. (6 I. C. C. Rep., 488.)

820. An offer of defendant carriers, made during the pendency of a case, to reduce the rates complained of, provided the Commission would relieve such carriers from the operation of the fourth section by granting an order permitting such reduced rates to be less than the charges of such carriers to intermediate points, is not an application for an order of relief under the fourth section. Such an order can only be granted upon the application and investigation required by law.

821. Excess of manufacturing cost to a complainant at one point over that of its competitors in other localities, by reason of inferior raw material and fuel, condition of its plant, cost of labor, or other like causes, is not to be considered in ascertaining the rightful relative adjustment of rates from such places, nor does the magnitude of a complainant's enterprise, the number of persons for whom it provides employment and support, the developing results of its business upon the natural resources of a State, the impracticability of moving its plant to other localities, or the fact that it produces material largely used on railroads for construction or repair entitle such complainant to different consideration in respect of just rates than individuals and small concerns should receive; but such facts demonstrate the far-reaching extent to which serious injury may be effected, directly and indirectly, by methods and practices which the statute was designed to prohibit.

822. Unreasonable disparity between the aggregate rates on hauls of different length to a common destination, whether by one carrier or by more than one jointly, resulting in undue advantage to one locality or business or disadvantage to another, is unlawful. It is lawful for a carrier, within reasonable limits, to accept less per ton per mile upon long hauls than upon short ones, and to widen the disparity between such rates per ton per mile as the difference in distance increases. Hence, the proportion received by some of the carriers out of a long-distance through rate is not necessarily the measure of the through rate which such carriers are entitled to make over a materially shorter distance, though such proportion is an important consideration in determining the rightful relation of the two through rates.

823. Water competition is altogether inadequate to account for the general relatively low rating of lumber, grain, and other staple or heavy goods to or between inland points, and that of a long list of commodities, including iron and steel, to San Francisco from Chicago and so-called Mississippi River and Missouri River points. Whatever may be the merits of carriers' competition as a defense of lower rates for longer than for shorter hauls, the former involving greater service and expense on the part of the carrier, better cause apparently exists for lower rates where, under higher ones, the traffic is subjected to such disadvantage or prejudice that it will not move at all.

824. It is for the interest of carriers as well as the public that their rates be low enough, if not below a remunerative point, to promote the general movement and distribution of low-class commodities, including iron and steel, which are in general demand for construction, building, manufacturing, and other purposes; and rates on steel rails and other commodities recognized as among the lowest classes of freight, which yield per ton per mile

the average received by the carriers on all freight, would be unjust. The value of the goods, the cost of the service, the degree of risk to the carrier, among other considerations, have important bearing upon the relation of rates on different kinds of traffic, as well as the reasonableness of a rate on a specified article.

825. The action of a carrier in diverting through traffic from a shorter route over which it participates in carriage, so as to secure for itself greater aggregate revenue through a long haul by a different route over which it is also engaged in transportation, sometimes results in discriminations and prejudices, both as to rates and facilities; and inequality in treatment of shippers and localities, having no other justification than this end, is indefensible.

826. The shipment of iron and steel from foreign countries to San Francisco at low rates by water affects the iron and steel industry at Pueblo as well as at Eastern points in respect to participation in supplying that market.

827. Rates in force from Pueblo to San Francisco prohibit the movement of iron and steel articles from the former place to the latter, while greatly lower rates from other and far more distant points prevail on such traffic to San Francisco, and the carriers' cost of transportation is much less from Pueblo than from such more distant points of shipment: *Held*, upon all the facts and circumstances in the case, that such rates from Pueblo are unreasonable and unjust, and subject complainant, the localities in the State of Colorado where its industry is carried on, and its traffic in iron and steel articles to San Francisco to undue and unreasonable prejudice and disadvantage, and result in giving undue preference and unreasonable advantage to other shippers in the United States of iron and steel over the defendant roads to San Francisco.

828. Carriers' methods of making and publishing rates from Eastern points to the Pacific coast criticised. Mere designation in a paper or circular of the means of arriving at rates by calculation or reference to other papers or tariffs does not constitute the rate sheet required to be published and filed by section six of the law. The reissuing by a carrier of a tariff of another line and by a supplement concurrently issued, limiting its use of the rates therein prescribed to such as are over a specified minimum, is reprehensible. The only satisfactory method of publishing rates is to definitely state the charges fixed between points clearly specified, without burdening and confusing the public with the need of making involved calculations or with scrutinizing a series of supplements to determine whether a particular rate has been changed since the original tariff was issued.

In the matter of the Safety of Employees and Travelers upon Railroads used in Interstate Commerce. (6 I. C. C. Rep., 332.)

829. Petitions of J. G. McCullough and E. B. Thomas, Receivers of the New York, Lake Erie and Western Railroad Company, and other carriers, for extension of time within which to comply with sections four and five of an act of Congress entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March 2, 1893. Time for placing grab irons and drawbars of a standard height on cars extended.

Milton Evans *v.* The Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers of said Union Pacific Railway Company; The Oregon Short Line and Utah Northern Railway Company Individually and as Operating the Railroad and Steamboat Lines of The Oregon Railway and Navigation Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers of said Oregon Short Line and Utah Northern Railway Company; The Oregon Railway and Navigation Company, and Edwin McNeill, the Receiver of said Oregon Railway and Navigation Company. (6 I. C. C. Rep., 520.)

H. D. May *v.* Edwin McNeill, Receiver of The Oregon Railway and Navigation Company, and the Oregon Railway and Navigation Company.

830. Prior leave of a court which has appointed the receiver of a railroad company is not necessary to entitle a shipper to complain against such receiver in a proceeding before the Commission, nor is such leave necessary to give the Commission jurisdiction in such a proceeding.

831. A showing of substantial similarity in transportation conditions is necessary to make the rates of carriers in sections of the country other than that served by the defendant road proper standards of comparison in a case of alleged unjust and unreasonable charges.

832. Principles laid down in Morrell *v.* Union Pac. R. Co., 4 Inters. Com. Rep. 469, 6 I. C. C. Rep., 121, and Newland *v.* Northern Pac. R. Co., 4 Inters. Com. Rep., 474, 6 I. C. C. Rep., 131, reaffirmed and applied in these cases.

833. Upon complaints of unreasonable and unjust rates for the transportation of wheat from Walla Walla and Dayton, Wash., to Portland, Oreg., and after investigation and consideration of all the facts and circumstances in each case: *Held,* That the rates complained of were unjust and unreasonable; that reduced wheat rates put in force between said points during the pendency of these proceedings are still above reasonable and just charges for the service rendered; that the wheat rate from Walla Walla to Portland should not exceed 19½ cents per hundred pounds, or $3.90 per ton; and the rate for the somewhat longer distance from Dayton to Portland should not exceed 20 cents per hundred pounds, or $4 per ton. Complainants' claim for money reparation denied.

Alanson S. Page, Cadwell B. Benson, and Charles Tremain *v.* The Delaware, Lackawanna and Western Railroad Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company. (6 I. C. C. Rep., 548.)

834. Under the "Act to regulate commerce," the Commission has continuing jurisdiction over the rates and practices of carriers subject to its provisions, and is not precluded from rehearing a particular case and amending or modifying its original order therein by the refusal of a circuit court of the United States to enforce such order against the carriers affected thereby, especially when the reasons assigned for such refusal do not relate to the principal question in controversy and are consistent with an approval of the amended or modified order.

835. The Commission is authorized and required in appropriate proceedings to determine whether rates or practices of carriers complained of are unlawful, and, if so, to what extent; and to require such carriers by suitable order to cease and desist not only from doing what is ascertained to be unlawful but from omitting to do what is found to be lawful.

836. In proceedings before the Commission complaining parties are not bound to include as defendants all carriers maintaining the rates or indulging in the practices complained of, but may proceed against the particular carrier or carriers whose lines are used or required by the complainants; nor can such carriers excuse disobedience of a lawful order of the Commission because other carriers, members of an association with them, were not made parties to the proceeding and have failed or refused to take action in conformity with such order.

837. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," and "unjust discrimination," as used in the statute, imply comparison, and rates to be lawful must bear just relation to each other as well as be reasonable *per se.*

838. The elements of bulk, weight, value, and character of commodities are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification.

839. When carriers have uniformly placed in the same class all grades of a particular commodity—for example, window shades—regardless of the difference in value between different grades or the size of the cases used for shipment, such carriers will not incur greater risks than they have thus voluntarily assumed, if the same practice is continued under a decision and order requiring a lower classification and rating for the great bulk of shipments of that commodity which are actually transported.

840. An order having been issued in this case on March 23, 1894, requiring the defendants to cease and desist from charging more than third-class rates for the transportation of window shades, and the circuit court of the United States having declined to enforce such order on the sole ground that it applied to shades having very high value as well as to the cheaper varieties: *Held,* upon rehearing before the Commission, that said order of March 23, 1894, should be vacated, and a new order entered containing the same general requirement, but with a proviso permitting the defendants to restrict their transportation of window shades at third-class rates to those limited to a specified maximum valuation at the time of shipment, and to prevent excessive undervaluation for transportation purposes of the much more expensive grades by such regulations as they may be advised are just and lawful.

In the matter of the Application of the Fitchburg Railroad Company for Relief from the Operation of the Fourth Section of the Act to Regulate Commerce.

841. Upon application for relief from the operation of the fourth section, so as to authorize the petitioner to charge less upon east-bound shipments of bitu-

minous coal for longer distances to Boston and points west thereof, to and including Waltham, Mass., than for shorter distances over the same line, in the same direction, to Roberts and points west thereof, to and including Shirley, Mass., and upon showing that such coal is also transported to Boston by sea, and that lower rates to the longer-distance points mentioned are necessary to enable petitioner to meet such competition, an order was granted allowing the petitioner temporarily and until further investigation to make a lower charge to the longer-distance points on such traffic to the extent of 5 cents per gross ton, subject, however, to revocation by the Commission with or without notice to petitioner at any time.

The Johnston-Larimer Dry Goods Company, complainant, *v.* The Atchison, Topeka and Santa Fe Railroad Company, and Aldace F Walker, John J. McCook, and Joseph C. Wilson, Receivers thereof; The Gulf, Colorado and Santa Fe Railway Company; The St. Louis and San Francisco Railway Company, and Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers thereof; The International and Great Northern Railroad Company; The Houston and Texas Central Railroad Company; The Missouri, Kansas and Texas Railway Company; The Missouri Pacific Railway Company; The Chicago, Rock Island and Pacific Railway Company; The Chicago, Rock Island and Texas Railway Company, and The Atchison, Topeka and Santa Fe Railway Company, defendants. (6 I. C. C. Rep., 568.)

842. Rates for the transportation of cotton piece goods, molasses, sugar, rice, or coffee from Galveston, Houston, or other shipping points in Texas to Wichita, Kans., which are higher via defendant lines than rates on said commodities, respectively, from the same point of shipment to Kansas City and other "Missouri River points," *held*, to be in violation of the provisions of the act to regulate commerce requiring reasonable and just transportation charges, and forbidding undue or unreasonable prejudice or disadvantage to any person, firm, corporation, or locality, or particular description of traffic, in any respect whatsoever. *Held, further*, That such higher rates to Wichita than to Kansas City or other "Missouri River points" via the lines of the Atchison, Topeka and Santa Fe Railway Company and the Chicago, Rock Island and Pacific Railway Company are in contravention of the fourth section of the act to regulate commerce.

843. Defendants required to correct their methods of announcing rates, changes in rates, and exceptions to rate sheets by participating lines, so that their rate schedules will be readily intelligible to shippers and consignees.

Jerome Hill Cotton Company, complainant *v.* The Missouri, Kansas and Texas Railway Company, defendant. (6 I. C. C. Rep., 601.)

844. A higher charge for a shorter than for a longer distance is sought to be justified by the existence of a compress at the longer-distance point, where cotton may be compressed and shipped thence to destination at less expense than cotton from the shorter distance can be hauled to the longer-distance point, there compressed, and hauled to destination, or, as is claimed, at less cost than it can be hauled to destination directly without compressing. The rate sheet in such case fixes a rate of charges from the shorter and longer distance points on flat or uncompressed cotton only, "with option of compression en route." In some cases the carrier avails itself of this option and has the shorter-distance cotton compressed, hauling it to the longer-distance point for that purpose; at other times it is carried directly to destination without compressing, the charge to the shipper being the same in either case. *Held*, That when under this option system of rate making the carrier causes cotton to be compressed at its own cost and for its own benefit, any dissimilarity of circumstances resulting therefrom is of the carrier's own making, and does not take the traffic out of the general rule of the statute which forbids a greater charge for a shorter distance.

845. Where a carrier charges 70 and 80 cents per 100 pounds on cotton from Indian Territory points to St. Louis, and 75 cents for distances 400 to 600 miles longer, and had long had in force rates of 60 and 65 cents per 100 pounds from these Indian Territory points when it did not reach St. Louis over its own line, and at a time when the value of cotton was much higher, and its transportation more expensive than now; when it had made considerable reductions in its rates and charges generally, and upon 99 per cent or practically all its cotton rates except those in dispute; and when its rate on other freight, hauled and handled at greater expense, is much less than cotton rates; and where other roads in the same territory for like rates have much longer hauls. *Held*, That such charges of 70 and 80 cents are unreasonable, and to be reasonable should not exceed 60 and 65 cents per 100 pounds.

846. The financial necessities and conditions of the carrier should be considered and given proper weight in fixing rates, but are not controlling to the extent that, independent of other circumstances, any rates are reasonable until the earnings are sufficient to operate the road and meet all the obligations of the company. The stated obligations of the carriers between St. Louis and Texas, and St. Louis and the Indian Territory, to be met by earnings, and eight times as great on some as upon others, varying from less than $13,000 to more than $103,000 per mile; and to adjust reasonable rates on the basis of the bonds and stock issued is impracticable.

E. D. McClelen, W. M. Elgin, Jabe C. Faughender, Roberts & Stewart, and John C. Woolf *v.* The Southern Railway Company; The Pennsylvania Railroad Company; The Cumberland Valley Railroad Company; The Baltimore and Ohio Railroad Company; The Norfolk and Western Railroad Company and F. J. Kimball and Henry Fink, Receivers thereof; The Baltimore, Chesapeake and Richmond Steamboat Company. (6 I. C. C. Rep., 588.)

E. D. McClelen, W. M. Elgin, Jabe C. Faughender, Roberts & Stewart, and John C. Woolf *v.* The Southern Railway Company; The Chattanooga, Rome and Columbus Railroad Company and Eugene E. Jones, the Receiver thereof; The East and West Railroad Company.

847. The exaction, without lawful excuse, of a greater compensation in the aggregate for the shorter than for the longer haul over the same line in the same direction, the shorter being included in the longer, which is forbidden by section 4 of the act to regulate commerce, is only a form of unjust discrimination or undue preference, to which, it seems, Congress desired to call particular attention because of its prevalence in certain sections of the country.

848. Competition by a carrier subject to the act to regulate commerce, and all matters relative thereto, may be presented to the Commission for determination upon application of defendants for relief from the operation of the fourth section of the act, under the proviso to said act.

In the matter of Alleged Unlawful Transportation Charges by the Illinois Central Railroad Company. (6 I. C. C. Rep., 624.)

849. Application of combination rates to through and continuous shipments criticised as unjust.

850. Upon complaint forwarded by the Railroad Commission of Mississippi, and investigation thereon instituted by the Commission on its own motion, respondent materially reduced its rates of freight between Memphis, Tenn., and Coldwater, Miss., and other stations on its Memphis division, such rates having been the principal subject of testimony in the proceeding, but it also appearing that such rates should be further revised as to certain points and traffic specified, *held*, upon such action of respondent, and the disposition thus manifested to remove just cause of complaint and make the further revision required, that no order be entered at this time, and that all the matters involved be held open for such further action or investigation as, upon the application or petition of any interested party, may appear necessary.

The Board of trade of the City of Lynchburg, Va.; Witt & Watkins; Bell, Barker & Jennings; Lewis & Jennings; Robinson, Tate & Co.; Rivermont Furniture Company; Stover, Marshall & Winfree; Kinnier, Montgomery & Co.; Guggenheimer & Co.; Hughes, Effinger & Co.; Gibbs, Hancock & Trinkle; Gilliam & Co., and Christian, Beasley & Co. *v.* The Old Dominion Steamship Company; The Norfolk and Western Railroad Company and F. J. Kimball and Henry Fink, Receivers thereof; The East Tennessee, Virginia and Georgia Railway Company and Samuel Spencer, C. M. McGhee, and Henry Fink, Receivers thereof; The Southern Railway Company. (6 I. C. C. Rep., 632.)

The Board of Trade of the City of Lynchburg, Va.; Witt & Watkins; Berry, Gilliam & Co.; Craddock, Terry & Co.; Bell, Barker & Jennings; Rivermont Furniture Company; Stover, Marshall & Winfree; Hughes, Effinger & Co.; Gibbs, Hancock & Trinkle, and Gilliam & Co. *v.* The Merchants and Miners' Transportation Company; The Norfolk and Western Railroad Company and F. J. Kimball and Henry Fink, Receivers thereof; The East Tennessee, Virginia and Georgia Railway Company and Samuel Spencer, C. M. McGee, and Henry Fink, Receivers thereof; The Southern Railway Company.

851. Under the fourth section of the act to regulate commerce a carrier is not justified in charging more for the shorter than for the longer distance by competition at the longer-distance point of other carriers which are themselves subject to that act, in the absence of authority from the Commission under the proviso clause of said section. Trammell *v.* Clyde S. S. Co. (Georgia R.

Commission Cases), 5 I. C. C. Rep., 324, 4 Inters. Com. Rep., 120, cited and reaffirmed.

852. When rates are relatively unjust, so that undue preference is afforded to one locality or undue prejudice results to another, the law is violated and its penalties incurred, although the higher rate is not in itself excessive, and such rule is especially applicable where a given relation in rates, long continued and concededly equitable, is suddenly and almost completely reversed, merely because other carriers to the longer distance point have disregarded their legal duty.

853. During the period between May 29 and August 1, 1894, when greatly reduced rates were charged by defendants to Knoxville, Tenn., dealers at Lynchburg, Va., an intermediate locality, were entitled to rates over the defendant lines from New York, Providence, and Boston not greater than those accepted at the same time on like traffic over said lines to Knoxville, and the excess paid for transportation by the intervening Lynchburg dealers over contemporaneous rates to Knoxville was unlawfully collected.

The Commercial Club of Omaha *v.* The Chicago, Rock Island and Pacific Railway Company; The Chicago, Rock Island and Texas Railway Company; The Missouri Pacific Railway Company; The Burlington and Missouri River Railroad Company in Nebraska; The Kansas City, St. Joseph and Council Bluffs Railroad Company; The Missouri, Kansas and Texas Railway Company; The Atchison, Topeka and Santa Fe Railroad Company and Aldace F. Walker, John J. McCook and J. C. Wilson, receivers thereof; the Gulf, Colorado and Santa Fe Railway Company; The Houston and Texas Central Railroad Company; The International and Great Northern Railroad Company; The Texas and Pacific Railway Company; The Chicago, Burlington and Quincy Railroad Company, and the Wabash Railroad Company. (6 I. C. C. Rep., 647.)

854. Carriers have no right to disregard distance and natural advantages for the purpose of bringing about commercial equality.

855. The practice, if lawful, of giving to Kansas City, on shipments from the West through Pueblo, Colorado Springs, Denver, and Cheyenne, and from the Northwest through Cheyenne, rates not higher than on such shipments to Omaha, furnishes no warrant for giving Omaha rates from Texas points not higher than those to Kansas City, the circumstances and conditions in the two cases being substantially dissimilar.

856. Through rates are matters of contract between carriers composing through lines, and the Commission has no power to compel connecting carriers to contract with each other.

857. In a case before the Commission, instituted by complaint and strictly *inter partes*, matter not expressly put in issue by the pleadings or necessarily involved in issues so presented can not be authoritatively determined by the Commission.

858. If in cases of shipments under a through bill of lading and a through rate the privilege of "stoppage in transit" at an intermediate point and trying the market there, and, if it be found unsatisfactory, of reshipping on to the point of original destination at the balance of the through rate, be lawful, the granting of it to one locality and denying of it to another under substantially similar circumstances would be an unjust discrimination against the latter.

859. The maxima class rates between Omaha and Texas points should not be as high as those between Chicago and Texas points, and should not exceed those between Davenport, Rock Island and Moline and Texas points, and the rate on sirup from Omaha should not be in excess of that from Davenport.

In the matter of Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the Atchison, Topeka & Santa Fé Railway Company, The Chicago Great Western Railway Company, and others. (7 I. C. C. Rep., 33.)

860. A railway company owning the entire stock of a development company, which had been organized for the purpose of holding the title to certain lands of the railway company, caused grain to be purchased in Kansas City in the name of the development company, transported over the lines of the railway company to Chicago, and there sold upon the market. The development company had no *bona fide* interest in the transaction. Neither the railway company nor the development company purchased the grain for the purposes of ownership, the whole transaction being simply a device to secure its transportation at other than the published rate; and the only rate paid was the profit upon the transaction, which varied with each shipment. *Held*, That this constituted a violation of the 2d, 3d, and 6th sections of the act to regulate commerce.

861. Haddock *v.* Delaware, L. & W. R. Co. (4 I. C. C. Rep., 296; 3 Inters. Com. Rep., 302), and Coxe Bros. & Co. *v.* Lehigh Valley R. Co. (4 I. C. C. ep., 535; 3 Inters. Com. Rep., 460), distinguished.

Wolf Brothers *v.* Allegheny Valley Railway Company and others. (7 I. C. C. Rep., 40.)

862. Complainants' open-end envelopes, though made by a different and cheaper process than that employed in the manufacture of other open-end or side envelopes, and usually from an inferior grade of paper, are nevertheless made, used, and shipped like merchandise envelopes, and not like paper bags, which defendants place in a lower class; and rating complainants' envelopes in the higher class provided for merchandise envelopes is not unlawful.

W. R. Rea *v.* Mobile and Ohio Railroad Company. (7 I. C. C. Rep., 43.)

863. Posting notices in a railway station that all rates are on file in the office of the station agent and may be examined upon application to such agent does not constitute compliance with the requirements of the act to regulate commerce in respect to the posting by a common carrier of printed schedules showing its rates, fares, and charges.

864. Evidence presented concerning defendant's alleged unlawful practice of charging second-class rates on beans, while tomatoes are carried by it at rates provided for third-class articles—*Held* not sufficient to justify an order requiring a change in classification; *Held*, further, that the present difference of almost one-half in the rate on beans and tomatoes shipped from Verona, Miss., to East St. Louis, Ill., the actual cost of transportation being nearly the same, ought to be remedied.

865. Group rates of 70 cents on second-class articles and 44 cents on third-class applying within a distance of 271 miles from Prichard, Ala., to Verona, Miss., on shipments over an extreme distance of 640 miles to East St. Louis, and which in the next 200 miles fall to 30 cents, second class, and 22 cents, third class—*Held, prima facie* unreasonable and unjustly discriminating against points within the group which are nearer to East St. Louis and unlawful as to shipment from Verona.

866. Issuance of order in regard to defendant's group-rate practice suspended, and case held open to permit readjustment of rates by defendant, but with leave to complainant to file such application for an order in that respect as may be necessary, and with leave, also, to either party to introduce further evidence.

867. Complainant offered the defendant a carload of potatoes at Verona, Miss., and asked that the shipment be forwarded to Cleveland, Ohio, via a connecting line with which defendant had at the time through billing arrangements and through rates, but defendant's agent refused to receive and route the shipment in accordance with such direction, and complainant was thereby damaged to the extent of $100. *Held*, That complainant was entitled to have his merchandise carried over the route which he directed, and that the failure of defendant to receive and forward the shipment accordingly was a discrimination against complainant in violation of the act to regulate commerce. Reparation ordered.

The Board of Railroad and Warehouse Commissioners of the State of Missouri *v.* The Eureka Springs Railway Company. (7 I. C. C. Rep., 69.)

868. The through rate over a railroad 18½ miles long (10½ miles in Arkansas and 8 in Missouri) was $1.85, 10 cents per mile. The local charges between the stations in Arkansas were on the basis of 5 cents per mile, any higher charge being unlawful under the statute of the State. On roads of this class in Missouri the rate authorized is 4 cents to the mile. The net earnings are in excess of a moderate return on the actual investments of the railway company, but are less than in former years. *Held*, That the through rate is unreasonable and unjust; and *Held further*, That any through rate over the road in excess of $1.20 (6½ cents per mile) is unreasonable and unlawful.

W. H. Boyer & Co. *v.* The Chesapeake, Ohio and Southwestern Railway Company; The Ohio and Mississippi Railway Company; The Baltimore and Ohio Railroad Company; The Illinois Central Railroad Company. (7 I. C. C. Rep., 55.)

869. The defendant carriers charged 29 cents per 100 pounds on cotton-seed meal from Memphis to Philadelphia, and 34 cents from Dyersburg, a shorter distance intermediate point on the same line. After hearing, the line or road of one of the companies complained against passed into the control of, and was being operated by, a company not a party to the proceeding. This company, on being made a party, answered that it had put in effect the same

rate, 26 cents, from both Memphis and Dyersburg, which, on further investigation, was found to be the fact. *Held*, The cause of complaint being removed, the statute substantially complied with, reparation was made. No order was necessary, and the case was dismissed.

In the matter of alleged violations of the fourth section of the act to regulate commerce by the Atchison, Topeka and Santa Fé Railway Company, and the receivers thereof, and others. (7 I. C. C. Rep., 61.)

870. No disturbance of rates, secret or open, creates such dissimilarity of circumstances and conditions under section 4 of the act to regulate commerce as will justify either of two or more competing carriers subject to that act in charging more for the short than for the long haul, without an order of the Commission.

Charles M. Willson *v.* Rock Creek Railway Company of the District of Columbia. (7 I. C. C. Rep., 83.)

871. The defendant, operating a line of electric railway lying partly in the District of Columbia and partly in the State of Maryland, is subject to the provisions of the act to regulate commerce, although it appears to be constructed upon or along public highways, and is essentially a street surface road for the conveyance of urban and suburban passengers. *Yoemans* and *Prouty*, Commissioners, dissenting.

872. All internal commerce is either State or interstate. Commerce carried on between the State of Maryland and the District of Columbia is not subject to regulation by Maryland laws, and is therefore within the jurisdiction of Congress.

873. The defendant railway company and a land company owning land and a suburban hotel along the line of railway are distinct corporations, but under substantially the same ownership and control. The land company purchased passenger tickets of the railway company at full rates of fare and sold them at half rates to guests of its hotel, to persons residing upon land which it had sold or otherwise transferred, and to others, but refused to sell such tickets at half rates to complainant, who, though living in the same locality, resided upon ground not acquired from the land company. *Held*, Upon the evidence presented, that no discrimination was practiced by the railway company; that the community of interest between the two corporations resulting from common ownership was not made a device for enabling the railway company to evade its legal obligations; and that the action of the land company in discriminating between persons in the sale of tickets for the benefit of its separate business is not subject to correction by this Commission. *Morrison* and *Clements*, Commissioners, dissenting.

874. Defendant charged one fare of 5 cents for the ride in Maryland and another for the ride in the District of Columbia, selling, however, six tickets for 25 cents, good for passage in either the District or State, making a through fare of 10 cents, or two such tickets for a continuous ride between Maryland and the District, the total length of its road being about 7½ miles. *Held*, That unreasonableness can not be presumed from the amount of fare so charged and the other facts incidentally appearing, no direct evidence upon that question having been presented.

875. Complaint to be dismissed without prejudice, unless complainant shall file application for rehearing.

Milk Producers' Protective Association, complainant, *v.* The Delaware, Lackawanna and Western Railroad Company; New York, Ontario and Western Railroad Company; New York, Lake Erie and Western Railroad Company, and J. G. McCullough and E. B. Thomas, the receivers thereof; New York, Susquehanna and Western Railroad Company; Pennsylvania, Poughkeepsie and Boston Railroad Company, and Henry H. Kingston, the receiver therof; Lehigh Valley Railroad Company; New York, New Haven and Hartford Railroad Company; Lehigh and Hudson River Railway Company; the President, Managers, and Company of the Delaware and Hudson Canal Company; Albany and Susquehanna Railroad Company; Philadelphia, Reading and New England Railroad Company, and J. K. O. Sherwood, receiver thereof; New York Central and Hudson River Railroad Company; West Shore Railroad Company; Wallkill Valley Railroad Company; Ulster and Delaware Railroad Company; Elmira, Cortland and Northern Railroad Company; Lehigh and New England Railroad Company; and The Erie Railroad Company, defendants. (7 I. C. C. Rep., 92.)

876. The complaining Milk Producers' Association, whether representing its own members or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry on some of the defendant lines, was entitled to bring and maintain this proceeding,

affecting rates on milk supplied for a common market, against all the defendants engaged in carrying for that market. A defendant carrier is not entitled to have a complaint dismissed as to it "because of the absence of direct damage to the complainant," and it is the duty of the Commission, under express direction in the act, to "execute and enforce" the provisions of the statute.

877. The defendant, The New York, Susquehanna and Western Railroad Company, engaged in the transportation of milk and cream from points in the State of New York, through the State of New Jersey, to the city of New York, is subject to regulation under the act to regulate commerce in respect of such transportation.

878. Charging the same aggregate rates on like traffic for longer and shorter distances over the same line in the same direction does not contravene the provisions of section 4 of the act to regulate commerce.

879. The free transportation of shippers or dealers between State or interstate points on account of interstate freight traffic furnished to the carrier is unlawful.

880. Whether an agreement entered into by a carrier mainly for the purpose of developing its milk traffic, and under which compensation is afforded to the other contracting party equal to a considerable share of the gross receipts from such traffic, involves extravagant expenditure of revenue and is disadvantageous to the carrier is matter for it to determine; but extraordinary or unnecessary cost of operation or management can not be permitted to excuse unreasonable or unjust rates, discriminations, preferences, or prejudices.

881. Charging the same rate per quart on milk in 40-quart cans and in bottles usually of one quart capacity and packed in cases, found to constitute discrimination in favor of the bottle method of shipment; but, for reasons stated, *Held*, That the proper relation of rates as between can and bottle milk from all points of shipment need not now be determined.

882. A uniform or blanket rate on milk, and also on cream from all stations on the defendant lines to Weehawken, Hoboken, and Jersey City, N. J., or through Jersey City to New York, N. Y., namely, 32 cents on milk and 50 cents on cream per can of 40 quarts, regardless of distance or difference in amount of service rendered, *Held*, To be unreasonable, unjust, and unduly prejudicial and disadvantageous to producers and shippers nearer the points of delivery, and in violation of sections 1 and 3 of the act to regulate commerce.

883. Upon all the facts and circumstances, including the peculiarities of defendant's milk and cream transportation service, *Held*,

That instead of the present method of charging uniform rates per 40-quart can of 32 cents on milk and 50 cents on cream from all interstate shipping stations on the defendant lines west of the Hudson River to the respective points of delivery in Weehawken, Hoboken, and Jersey City, N. J., there should be at least four divisions or groups of stations, the first group extending 40 miles from the terminal in New Jersey, the second covering a distance of 60 miles and ending about 100 miles from such terminal, the third embracing stations within the next 90 miles and extending about 190 miles from the terminal, and the fourth comprising stations beyond 190 miles from the point of delivery.

That the rates charged on milk in 40-quart cans should not exceed 23 cents from the first or 40-mile group of stations, 26 cents from the second or 60-mile group, nor 29 cents from the third or 90-mile group, and that the present rate of 32 cents from stations more distant than 190 miles is not unreasonable; that a rate on cream in cans which is 18 cents higher than the rate on milk in 40-quart cans, the present difference, is not unreasonable or unjust; that such group distances and rates should apply on the branches as well as on the main lines, and that the resulting relations of rates should be maintained; that any reductions that may be made in the present rate per quart on milk or cream in bottles should be followed by a corresponding change in the rate for each group on milk or cream in 40-quart cans.

That the distance on the Ulster and Delaware road covered by the third group should be limited to 30 miles, and stations on that road more than 130 miles from Weehawken *via* the West Shore road should constitute its fourth group; that by short-line distances all points on the Wallkill Valley and Lehigh and Hudson River roads are within the second group, and rates from such stations should not exceed those applicable for the second group; that the Erie Railroad Company should charge third-group rates from points on its Carbondale branch, which can be reached over distances less than 190 miles *via* the Scranton branch of the Ontario and Western, and such relief from the operation of the 4th section is granted to the Erie Company as may be necessary to enable it to lawfully make such charges effective; that

the defendant, the New York, Susquehanna and Western Railroad Company, is entitled on shipments of milk and cream from New York points which it carries through New Jersey and delivers in New York City to charge such an addition to its rate to Jersey City, N. J., as is reasonably warranted by the greater cost of delivery in New York City.

In the matter of the application of the Great Northern Railway Company, The Northern Pacific Railway Company, The Union Pacific Railway Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago and Alton Railroad Company, The Wabash Railroad Company, The Burlington, Cedar Rapids and Northern Railway Company, The Chicago and Northwestern Railway Company, The Chicago and Grand Trunk Railway Company, The Chicago, Burlington and Northern Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago Great Western Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company, The Minneapolis and St. Louis Railroad Company, The Wisconsin Central Railroad Company, The Grand Trunk Railway Company of Canada, and the Spokane Falls and Northern Railway Company for relief from the operation of the fourth section of the act to regulate commerce.

884. Upon application for relief from the operation of the fourth section and showing of competition by the Canadian Pacific Railway, a line wholly in Canada, a temporary order was granted authorizing the petitioners to charge less for the transportation of passengers both east bound and west bound for the longer distances between points in the "Kootenai district," in British Columbia, Dominion of Canada, and points upon the Detroit and St. Clair rivers and easterly thereof in said Dominion, and in that portion of the New England States reached directly by the rails of the Grand Trunk Railway, than for the shorter distances to intermediate points, but not less than those charged by the Canadian Pacific Railway for transportation of passengers between the same points.

In the matter of the Tariffs and Classification of the Pennsylvania Railroad Company and Other Companies. (7 I. C. C. Rep., 177.)

885. Investigation of freight rates charged by carriers to Southern points during a rate war in June and July, 1894 (report of which was duly made and published—Eighth Ann. Rept. Int. Com. Com., 20–24), discontinued on supplemental report and opinion stating the restoration on August 1, 1894, of rates in force prior to June of that year, and citing decision of Commission awarding reparation to injured merchants and dealers at Lynchburg, Va. (6 I. C. C. Rep., 632.)

Freight Bureau of the Cincinnati Chamber of Commerce *v.* Cincinnati, New Orleans and Texas Pacific Railway Company, Louisville and Nashville Railroad Company, *et al.* (7 I. C. C. Rep., 180.)

886. A city is entitled to benefits arising from its location, and the fact that it enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in other respects.

887. The location of Cincinnati upon the north bank of the Ohio River, and the fact that railroads leading south must cross that river by expensive bridges for which an arbitrary or toll is charged, or allowed in the division of rates, justify some higher differential from Cincinnati over rates from Louisville, on the south bank of the river, to destination points in so-called "Montgomery and Southwestern territory."

888. Distance is an important element in the determination of rates, and in the absence of other influences it is a controlling factor. When carriers claim justification for higher rates from a competing locality on the ground of greater distance, and the complainant, representing such locality, fails to show circumstances which operate to eliminate distance from consideration or to counteract its influence, such higher rates, if made in accordance with the principle of distance, will not be held unreasonable.

889. While existing differentials which result in higher freight rates from Cincinnati than from Louisville to "Montgomery territory" and "Southwestern territory" may, as a whole, discriminate against Cincinnati, the inequality arises, if it exists, through combinations of rates to Cincinnati and Louisville from territory north of the Ohio River with rates from these points south; there is no showing whether the fault lies with rates north or south of the river, and neither of the carriers operating north of the river is a party to this proceeding. It fairly appears, on the other hand, that if such differentials were entirely abolished, the rates from a large section north of the Ohio would be against Louisville. The complainant asks in its petition

that the higher rates from Cincinnati than from Louisville be prohibited; readjustment of present rates is not prayed for, and only the fact of distance is presented as a basis for determining whether the higher rates from Cincinnati are unjust, or what rates would be just: *Held*, That the complaint should be dismissed without prejudice.

Mount Vernon Milling Company *v.* Chicago, Milwaukee and St. Paul Railway Company. (7 I. C. C. Rep., 194.)

890. Defendant's failure or refusal to provide at its own cost and thereafter maintain a spur or side track from its main line to complainant's mill and elevator at Mount Vernon, S. D., was not, by the evidence adduced as to the provision and maintenance of side tracks from defendant's line to mills or elevators at other points in South Dakota, shown to be in violation of section 3 of the act to regulate commerce.

Charles G. Freeman *v.* Atchison, Topeka and Santa Fe Railroad Company, and Aldace F. Walker and John J. McCook, Receivers thereof; Chicago, Rock Island and Pacific Railway Company; Kansas City, Fort Scott and Memphis Railroad Company; Missouri, Kansas and Texas Railway Company; St. Louis and San Francisco Railway Company, and Aldace F. Walker and John J. McCook, Receivers thereof; St. Louis, Iron Mountain and Southern Railway Company; St. Louis Southwestern Railway Company; Southern Pacific Company, and Texas and Pacific Railway Company. (7 I. C. C. Rep., 202.)

891. A combination rate of 72 cents on potatoes in carloads from Cadillac, Mich., *via* Grand Rapids, Mich., to Texas common points, made effective since this proceeding was instituted, was a reduction of 5 cents in the rate complained of, and was a substantial satisfaction of the complaint; but it appeared that local rates in force to and from the Mississippi River were charged on said shipments from Cadillac, while defendants, operating west of that river, accepted less than their said charges west of the river on like shipments which originated at Grand Rapids, Mich., and other points in so-called Detroit-Cleveland territory: *Held*, That without approving defendants' system of shrinking rates, the complaint should be dismissed without prejudice.

Paine Brothers & Co. *v.* Lehigh Valley Railroad Company; Philadelphia and Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers thereof; Central Railroad Company of New Jersey; Wilmington and Northern Railroad Company; New York, Susquehanna and Western Railroad Company; Erie Railroad Company; Delaware and Hudson Canal Company; New England Railroad Company; Fitchburg Railroad Company; Fall Brook Railway Company; Delaware, Lackawanna and Western Railroad Company; Central Vermont Railroad Company, and E. C. Smith and Charles M. Hays, receivers thereof; New York Central and Hudson River Railroad Company. (7 I. C. C. Rep., 218.)

892. Defendants established rates on "ex-lake" grain from Buffalo, N. Y., to New York and Philadelphia, and points taking New York and Philadelphia rates, which were lower on so-called cargo lots of 10,000 bushels of oats and 8,000 bushels of other grain than on shipments of oats and such other grain in carload lots, but afterwards modified their tariffs so that, with few exceptions, the lower rates for cargo lots were restricted to export shipments. Such modification of tariffs removed the principal grievance complained of, and no evidence was offered concerning rates on shipment of grain for export: *Held*. That the principle involved under lower rates for cargo or trainload quantities than for carload shipments, whether for export or domestic use, violates the rule of equality and tends to defeat its just and wholesome purpose, and such purpose is not fully accomplished by making all cargo shippers pay the same rate and charging all cargo shippers alike; that defendants should reconsider their grain tariffs with a view to amendment thereof in accordance with the opinion herein expressed, and that the case be held open for such further action as may be deemed appropriate.

The New York, New Haven and Hartford Railroad Company *v.* Thomas C. Platt and Marsden J. Perry, Receivers of the New York and New England Railroad Company. (7 I. C. C. Rep., 323.)

893. Rates established by a single carrier "upon its route" and shown on individual tariffs, and joint rates "over continuous lines or routes operated by more than one carrier" shown on joint tariffs, are the rates authorized by section 6 of the act to regulate commerce, and required to be posted at stations and filed with the Commission. The word "joint," and the express reference in the statute to the *several* carriers over a continuous line and the joint tariffs which they *establish*, import concurrence and assent in fixing

aggregate rates for a combined service, as distinguished from the separate rates of a single carrier for transportation "upon its route."

894. Joint rates may be so divided between the carriers that each receives less than its established local rate, or so that the full local charge is secured by one or more of the carriers, the other party or parties accepting less than local rates, but whatever the basis of division, the essential feature of such rates is that the connecting carriers have agreed or mutually consented to carry traffic over the connecting line for a less aggregate charge than the sum of their established local rates.

895. In the absence of some agreement or understanding with a connecting line by which a joint tariff of rates is authorized, a given carrier can not lawfully publish or apply any other rates than those which it fixes for transportation between points reached by its railroad; and the rates so fixed are the only lawful rates which such carrier can charge for any transportation service which it may perform, whether the traffic carried is destined to points on its own road or to points on the line of some other carrier.

896. A carrier which has published and filed its rates as the law requires may combine such rates with the lawfully established rates of a connecting carrier or carriers, and thus announce the aggregate amount for which traffic will be transported from points on its railroad to points on the line of such connecting carrier or carriers; but one carrier can not lawfully add to the duly established rates of another carrier any amount it pleases less than its own local rates, and publish and use that sum as a through rate to points on the line of such other carrier without its consent. Such a through rate is not a "joint rate," for joint rates can be made only by concurrence or assent; nor is it a combination rate, for one of its component parts has no legal existence or sanction as a separate or local charge; there must be lawful rates upon each of the roads before there can be a lawful combination of rates.

897. While through routes and reduced through rates, which would facilitate the movement of traffic and thereby benefit the public, are in some cases prevented by the unreasonable refusal of carriers to unite in granting such facilities, and the statute was apparently designed to require connecting carriers to join in the formation of through routes at lower aggregate rates than a combination of locals, the machinery necessary to accomplish that purpose is not provided, and the Commission has repeatedly called attention to this defect in the law.

898. Defendant published a schedule purporting to be a joint tariff of rates on coal from a point on its road to a number of destinations reached by the complainant railroad company, whereby the complainant company received its full local charges to said destinations from junction points with defendant's road, and the defendant accepted the remainder, which was in each instance less than its established local rate from the place of shipment to the point of connection. Complainant, which also carried coal to the same destinations by a longer route over its own rails, thereby securing greater compensation than was afforded from coal coming to it by defendant's road, refused to unite in the rates named by defendant in said so-called joint tariff and protested against the use of such rates by a connecting carrier as unauthorized and unlawful for want of mutual consent. *Held*, That the complaint should be sustained and the defendant company be required to cease and desist from publishing or applying through rates to points on complainant's lines which are less than the sums of their respective local charges.

In the matter of alleged unlawful rates and practices in the transportation of grain and grain products by Atchison, Topeka and Santa Fe Railway Company and others. (7 I. C. C. Rep., 240.)

899. Shipments of grain were carried to Kansas City, Mo., from points west thereof at local rates, and quantities of grain were afterwards reshipped and rebilled from Kansas City to Chicago or other destinations at the balance of the established through rate from the original point of shipment to Chicago or other ultimate destination, instead of the higher local rate in force from Kansas City to such destination. There was no agreement for through carriage between shipper and carrier at the original point of shipment, no other destination than Kansas City was named, and upon carriage of the grain to that point and delivery to consignee the transportation was completed and the local rate in effect to Kansas City was paid; but the practice was to allow the consignee or other owner of grain at Kansas City to ship from Kansas City to Chicago and other points at the "balance of the through rate," upon presentation of the paid expense bill to Kansas City and certification by a joint agent of carriers at Kansas City. Under this "expense bill" practice it was practicable, through transfer of expense bills, to secure

a lower "balance of through rate" than would result from deducting the local rate between the actual point of origin and Kansas City from the through rate between said point of origin and the final destination, and other rate manipulations were possible. *Held*, That such shipment and reshipment did not constitute a through shipment from the point of origin to the point of final destination, and grain so shipped and reshipped was not entitled to the benefit of the through rate in force. *Held further*, That the shipment from the point of origin to Kansas City was local, resulting in the grain becoming Kansas City grain, and the fact that it had come from a point farther west was no reason for applying on shipments of such grain from Kansas City any less or different rate than was in force from Kansas City.

900. No opinion upon the practices of milling or reconsigning or holding in transit, if the shipment is a through shipment upon a through rate, is expressed.

Brewer & Hanlieter *v.* Louisville and Nashville Railroad Company; Nashville, Chattanooga and St. Louis Railway Company; Western and Atlantic Railroad Company; Central of Georgia Railway Company. (7 I. C. C. Rep., 224.)

901. Rates charged by defendants for the transportation of freight articles from Cincinnati, Ohio, and Louisville, Ky., to Griffin, Ga., are materially higher than their rates on like traffic carried from Cincinnati and Louisville through Griffin to Macon, Ga., and Griffin and Macon are competing localities. *Held*, Upon the facts, that Griffin is entitled to Macon rates from Louisville and Cincinnati, and that charging any higher rate to Griffin is an unjust discrimination under section 3 of the act to regulate commerce.

902. Water competition, to justify higher shorter distance charges under the fourth section must be actual competition for transportation involved, and such as to dictate the rate by rail. A railroad rate so low as to drive water transportation out of existence can not be justified by showing the possibility of water competition; the law permits railroads to *meet*, not to *extinguish*, such competition.

903. Competition between markets, or between carriers subject to the regulating statute, does not create such dissimilarity of circumstances and conditions as will justify carriers in charging more for the short than for the long haul, under the fourth section, without an order of the Commission.

904. Defendants are engaged in competition with other carriers by railroad in the transportation of freight to both Griffin and Macon, Ga., but the defendants and their competitors make greatly lower rates from Louisville and Cincinnati for the longer distance to Macon than for the shorter distance to Griffin, which is an intermediate point between Atlanta and Macon. While the rates to Atlanta and Macon are substantially the same, such rates to Griffin are the rates to Atlanta added to local rates from Atlanta to Griffin. Rates for the transportation of freight from New York and other Eastern points to Griffin and Macon are practically the same. Although there is railroad competition for traffic to Griffin as well as to Macon, the carriers from Louisville and Cincinnati, while making low rates on account of such competition to Macon, refuse to establish like rates for Griffin. *Held*, That if there can be exceptional instances in which competition between carriers subject to the act may create the dissimilarity of circumstances and conditions under the fourth section, this case, where such competition is shown at both the shorter and longer distance points, is not one of them.

905. Railroad companies have the right to earn a proper return upon some investment, just what has not been very definitely determined; but in earning such returns they must operate their properties in accordance with the provisions of the statute forbidding discrimination between localities and charging more for the short than for the long haul.

Suffern, Hunt & Co. *v.* Indiana, Decatur and Western Railway Company. (7 I. C. C. Rep., 255.)

Suffern, Hunt & Co. *v.* Indiana, Decatur and Western Railway Company and Cincinnati, Hamilton and Dayton Railway Company.

906. Rules or regulations which in any wise change, affect, or determine any part or the aggregate of a carrier's rates, fares, or charges must be shown separately upon the carrier's posted schedules of rates, fares, and charges; and any such rules or regulations promulgated by the carrier in circulars issued independently of its rate schedules are not lawfully in force.

907. Rules or regulations which, if enforced, would result in changing or affecting rates or charges shown on published schedules, must be notified to the public for the time required by law for other rate changes. The notice should set forth the changes proposed to be made in the schedules then in

effect, and such changes must be shown by printing new schedules or be plainly indicated upon the schedules in force at the time.

908. Circulars issued by a railway company prescribed maximum and minimum carload weights for grain depending upon the capacity of the car furnished by the railway company to the shipper; the rules so prescribed were not shown upon the carrier's posted schedules of rates and charges; and application of the rules to three carload shipments of corn carried for complainant resulted in materially increasing the charges above those in force under the carrier's published rate schedules: *Held*, That complainant only had to consult the schedule showing defendant's rates and charges, and that complainant is entitled to recover charges collected on its shipments in excess of those set forth in such schedule.

909. Under judicial interpretation of the statute, shippers and consignees can not depend for the lawful rate or charge upon what may be quoted by the carrier's agent, but they must be guided by the published rate sheets themselves; and this emphasizes the duty of carriers to make their schedules of rates comply precisely with the mandatory provisions in the statute concerning the contents and publication of such schedules, so that shippers may readily and accurately determine therefrom what rates, and what transportation rules affecting rates, are actually in force for a particular service.

910. The fact that circulars containing rules concerning carload weights had been filed with the Commission, and no opinion had been thereupon expressed by the Commission as to the legality thereof, raises no presumption of approval by the Commission of the rules or regulations therein set forth, or of the manner in which they were established.

911. A carrier which had not provided track scales at stations prescribed a rule or regulation forbidding shippers to load grain in cars beyond a specified weight above the marked capacity under a so-called "penalty" of increased rates on the excess weight: *Held*, That such rule or regulation, if properly established, is not unlawful, provided the increase in charges for excessive weight is not unreasonable, and the margin between such maximum and the carrier's minimum carload weight for grain is so wide that shippers may, without scales, readily comply with both rules.

912. A carrier enforced minimum carload weights for corn and other grain (except oats) which were 4,000 pounds less than the capacity of the car furnished by the carrier; the capacity of the car ordered by the shipper when such order could not be complied with, but this only on application to the superintendent, thus entailing more or less delay and sometimes loss to shippers; the capacity of the car furnished by the carrier on shipments destined to Indianapolis; and a general minimum weight of 28,000 pounds: *Held*, upon all the facts, That minimum carload weights for corn or other grain which vary with the size of cars furnished by the carrier are unreasonable and unjust and operate to subject complainant and other shippers to unjust discrimination and undue prejudice and disadvantage; and that the carrier should establish a fixed, reasonable, and just minimum carload weight for corn and for each other kind of grain.

In the matter of the application of the Chicago and Eastern Illinois Railroad Company for relief from the operation of the fourth section of the act to regulate commerce.

913. Upon application for relief from the operation of the fourth section, and upon showing of competition by shorter lines and that petitioner is able to utilize returning trains of coal cars in traffic to the longer distance points, a temporary order was granted authorizing the petitioner to charge less for the longer distance between Chicago, Ill., and La Crosse, Wilders, Wheatfield, or Fair Oaks, Ind., than for shorter distances over the same line in the same direction to intermediate points in Indiana, but not less for such longer distances than the rates which are charged by such shorter lines between the same points.

In the matter of the application of the Delaware, Lackawanna and Western Railway Company for relief from the operation of the fourth section of the act to regulate commerce.

914. Upon application for relief from the operation of the fourth section, and showing of competition by short lines, a temporary order was granted authorizing the petitioner to charge less for freight for Chicago and other points west of Buffalo, for the longer distances from Syracuse and other points on its line, Oswego to Little York, inclusive, than from the shorter distances over the same line, in the same direction, from stations on its lines in New York south of Little York and west of Binghamton to and including Atlanta,

N. Y., but not less for such longer distances than the rates charged by such short-line carriers to the same points from Syracuse and points taking Syracuse rates.

J. W. Cary, R. M. Thornton, S. A. Brown & Co., R. L. Smith, A. N. Matthews, W. J. Lloyd, J. H. Gadd, W. H. Linzy, T. E. Clark, F. A. Pickard, and W. S. Wadsworth, merchants and dealers at Eureka Springs, Arkansas, complainants, *v.* The Eureka Springs Railway Company, The St. Louis and San Francisco Railway Company, and Aldace F. Walker and John J. McCook, receivers thereof, The Atchison, Topeka and Santa Fe Railroad Company, and Aldace F. Walker and John J. McCook, receivers thereof, defendants. (7 I. C. C. Rep., 286.)

915. The defendant companies, by joint tariffs, established through lines from St. Louis and Springfield to Eureka Springs, and by an arrangement with the Harrison Transportation Company, attempted to extend by wagon carriage such through lines to Harrison, Berryville, and many other points in Arkansas not reached by either or any line of railroad, charging much less to Eureka Springs on goods to be so forwarded than on the same goods from same points of origin for Eureka Springs proper: *Held*, The provisions of the act to regulate commerce do not apply to transportation by team or wagon, and neither the joint tariffs nor the arrangement of defendants with The Harrison Transportation Company constitute substantially dissimilar circumstances and conditions nor make them joint carriers with said transportation company, nor carriers at all beyond Eureka Springs, and such unequal charges to Eureka Springs constitute unjust discrimination, and subject complainants, their business, and Eureka Springs, to unreasonable disadvantage and give undue preference to Harrison and such other localities and shippers.

916. The rate on goods of the first class between St. Louis and Eureka Springs proper being $1.25 per 100 pounds and on the same goods from or to the Harrison district the charge for the same services being $1 and on other classes in proportion; between Springfield and Eureka Springs the first-class rate being 72 cents, and for or from the Harrison district 45 cents: *Held*, Such rates to and from Eureka Springs proper are unreasonable and unlawful.

917. The average annual earnings for a term of years would warrant a reduction of the Eureka Springs rates to the basis of rates conceded to the Harrison district, but the current annual earnings do not justify a reduction to the full extent of such discriminations, and a moderate present reduction is recommended.

918. The charges of the Eureka Springs Railway Company between Seligman and Eureka Springs on first-class goods to or from the Harrison district are 19 cents per 100 pounds, and on the business of Eureka Springs proper are 35 cents, with proportionate rates on all classes, which Eureka Springs rates are found to be unreasonable and unlawful.

919. Transportation charges should be liberal until the earnings are fully sufficient for a fair return on actual investment, but it does not follow that rates long maintained and grossly discriminative must be continuous or may be lawfully exacted year by year.

920. "Under the interstate commerce act the Commission has no power to prescribe the tariff of rates which shall control in the future." (167 U. S., 479.)

"The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider the facts and give them their proper weight." (162 U. S., 184.)

Under the law as construed by the court the Commission has power to say what in respect to the past was reasonable and just, but as to rates complained of as unreasonable, unjust, and unlawful, and so found to be by the Commission, it can make no provision or order for their reduction which the courts are required to enforce or the carriers obliged to obey.

When rates are found to be unreasonable, the Commission can declare them unlawful and recommend their reduction, and where, after investigation, rates of carriers complained of are found to have been in the past, and still to be, unjust, unreasonable, and in violation of the statute, it is made the duty of the Commission, by section 15 of the act to regulate commerce, to notify and require such carriers to cease and desist from such violations.

W. L. Fewell *v.* Richmond and Danville Railroad Company (operating the Georgia Pacific Railway) and Samuel Spencer, F. W. Huidekoper, and Reuben Foster, receivers thereof; Alabama Great Southern Railroad Company; Alabama and Vicksburg Railway Company; Mobile and Ohio Railroad Company; Georgia Pacific Railway Company, and Samuel Spencer, F. W. Huidekoper, and Reuben Foster, receivers thereof; The Southern Railway Company. (7 I. C. C. Rep., 354.)

In the matter of rates charged by The Alabama Great Southern Railroad Company and The Alabama and Vicksburg Railway Company for the transportation of coal from points in the State of Alabama to points in the State of Mississippi.

921. Defendants and other carriers, all subject to the act to regulate commerce, are engaged in the interstate transportation of coal, wholly by railroad, from various mines in Alabama and other States to Jackson, Miss., under agreed rates, which are less for each line than is charged on coal for shorter distances over the same line in the same direction, the shorter being included within the longer distance. *Held*, That the transportation by defendants of coal in carloads from such mines to Jackson and shorter-distance localities is performed "under substantially similar circumstances and conditions," within the meaning of the fourth section of the statute.

922. Coal transported from Corona, Birmingham, or Blocton, Ala., to Vicksburg, Miss., must go by railroad, and the competition of such coal, and coal from other Alabama mines in the Vicksburg market, is with coal brought over long distances down the Ohio and Mississippi rivers from Pittsburg, Pa., and other points in that mining district. *Held*, That this is not competition between rail and water lines for transportation from a particular locality, but the competition of markets or mines for the supply of coal at Vicksburg, the force and effect of which is determined by commercial considerations peculiar to the business of shippers and wholly disconnected from the circumstances and conditions under which transportation is conducted.

923. Section 4 of the act applies when the traffic is "over the same line" and "in the same direction," and to "transportation under substantially similar circumstances and conditions," and "the shorter" must be included within "the longer" distance; and any injustice or undue hardship which may result to carriers from compliance with the statute is removable by the Commission upon application by such carriers under the procedure authorized by the proviso clause of that section.

A. J. Gustin *v.* The Illinois Central Railroad Company *et al.* (7 I. C. C. Rep., 376.)

924. Freight rates from Memphis, New Orleans, Dallas, and other Southern and Southwestern points to Kearney, Nebr., made up of rates to and from Omaha, were alleged to be unreasonable, unjust, and unlawful, but no joint through rates were published or filed, the defendants either denied or did not admit that the shipment and carriage was continuous, and no proof was submitted by complainant showing that defendants make a through route in fact by their course of business. *Held*, That the Commission has no power to compel a through route, and, no issue of law or fact having been presented over which the Commission has jurisdiction, the complaint should be dismissed.

The Board of Railroad Commissioners of the State of Kentucky *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company; The Southern Railway Company *et al.* (7 I. C. C. Rep., 380.)

925. Comparison of wheat rates charged by defendants from Nicholasville, Ky., with higher rates to the same points from St. Louis, Chicago, or Milwaukee, much more distant points of shipment, or with a lower wheat rate in force from Louisville, Ky., to Newport News, Va., while tending to support complainant's case, not found to fairly establish the fact that the rates complained of were unreasonable, or that they discriminated against Nicholasville.

926. Rates charged over the Cincinnati, New Orleans and Texas Pacific and Southern Railways for the transportation of wheat in carloads to Morristown and other points in Tennessee, found to have been higher for the shorter distance from Nicholasville, Ky., than for the longer distance over the same line, in the same direction, from Cincinnati, Ohio; but by a joint tariff recently filed the rates from Nicholasville were made not higher than those from Cincinnati. *Held*, That the former rates were in violation of the fourth section of the act, but that the present charges are not, and that formal order in that respect should not now be issued.

Commercial Club of Omaha, complainant, *v.* Chicago and Northwestern Railway Company; Fremont, Elkhorn and Missouri Valley Railroad Company; Chicago, Milwaukee and St. Paul Railway Company; Chicago, Rock Island and Pacific Railway Company; Chicago, Burlington and Quincy Railroad Company; Burlington and Missouri River Railroad Company in Nebraska; Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers of Union Pacific Railway Company, defendants. (7 I. C. C. Rep., 386.)

927. While like or "group" rates are frequently applied to cities considerably farther apart than are Omaha and Council Bluffs, the usage in this regard

is not so uniform and well established as to make an exception at those cities even *prima facie* unlawful.

928. The public right to a just relation of rates between rival communities arises from the statute which forbids discriminating charges, and that right can not be abridged or enlarged by agreements of carriers with each other, nor by promises made to shippers.

929. Council Bluffs, on the east bank of the Missouri River, is more favorably situated than Omaha, on the west side of that river, in regard to traffic with points in Iowa, and the defendant carriers are not to be condemned for recognizing such natural advantage of location in adjusting their charges; nor does it follow that rates should be the same from Omaha and Council Bluffs into Iowa because they are the same from those cities into Nebraska.

930. Omaha and Council Bluffs, on opposite sides of the Missouri River, are connected by an expensive bridge owned and operated by the Union Pacific Railway, and also used under lease by other carriers. Rates at Omaha and Council Bluffs are substantially the same to and from all points, except points in Iowa west of the west bank of the Mississippi River, and rates to and from those points are usually the bridge toll higher for Omaha than for Council Bluffs. Rates from the South are made the same to both cities by the competition of railways operated on both sides of the Missouri River. Rates from the West are the same to these cities and other common points as far east as Chicago, and are part of an extensive system of charges applied by the transcontinental lines. Rates from the East are as low to Omaha as to Council Bluffs; and this equality was brought about some fifteen years since by increasing rates to Council Bluffs to the amount of the bridge toll as then fixed. For reasons stated in the report this parity of rates from eastern points is a considerable advantage to Omaha. In view of the conditions affecting transportation to and from points in Iowa, and of the whole rate situation of the two places: *Held*, That the charge of unjust discrimination against Omaha is not sustained, and that the complaint should be dismissed without prejudice.

931. To justify interference by the Commission with the adjustment of rates as between rival localities it must appear that the preference and advantage to the one and the corresponding prejudice and disadvantage to the other are so appreciable and established with such a degree of certainty as to be justly declared unreasonable.

In the matter of the application of the Chicago and Alton Railroad Company and many other carriers for extension of the period within which they shall comply with the provisions of the first and second sections of the act of March 2, 1893. (8 I. C. C. Rep., —.)

932. Petitioning carriers granted an extension of two years from January 1, 1898, within which to comply with sections one and two of the railway safety-appliance act of March 2, 1893; and those owning cars and locomotives not equipped with couplers and train brakes as provided in sections one and two of said act required to make semiannual report of cars and locomotives so equipped during the six months then preceding.

Edwin E. Montell *v.* Baltimore and Ohio Railroad Company and John K. Cowen and Oscar G. Murray, Receivers thereof; Southern Railway Company. (7 I. C. C. Rep., 412.)

933. On complaint of violation by defendants of sections 3 and 4 of the act to regulate commerce, through charges on coal in carloads from Cumberland, Md., which were greater for the shorter distance to North Garden, Va., than for the longer distance over the same line to Lynchburg, Va., it appeared at the hearing that defendants had withdrawn and discontinued the lower rate to the longer distance point. *Held*, That such action by defendants obviated the infractions of the law so complained of.

934. Defendants' aggregate charge for the transportation of coal in carloads from Cumberland, Md., to North Garden, Va., and their respective divisions thereof, found excessive in comparision with rates charged by defendants and other carriers to various points; but the Commission is not authorized to fix a reduced or lower rate of charges which carriers can be required to respect in the future, even if the ascertained facts warranted a finding as to the extent of the reduction which should be made.

935. Although the act to regulate commerce requires that transportation charges shall be reasonable and just, and complainant prayed in his petition that defendants be ordered to establish and maintain such rate on coal in carloads from Cumberland, Md., to North Garden, Va., as should be deemed just, reasonable, and lawful, the act as recently interpreted by the courts makes no provision under which carriers can be ordered or required to establish or

maintain any rate other than such rate of charges as any such carrier may fix and establish for itself.

Fuller E. Calloway *v.* Louisville and Nashville Railroad Company; Western Railway of Alabama; Atlanta and West Point Railroad Company. (7 I. C. C. Rep., 431.)

936. It being settled that competition must be considered and may justify deviation from the rule of the fourth section, it follows that wherever competition of controlling force by existing lines is practicable it must be given effect, and that freely engaging in competition at one point, while wholly or largely suppressing it at a shorter distance locality, can not entitle carriers to make higher charges for shorter than for longer hauls over the same line in the same direction.

937. The transportation of freights by defendants from New Orleans to Lagrange and Fairburn, Ga., is "under substantially similar circumstances and conditions," the conditions and circumstances affecting transportation by them from New Orleans to Lagrange and Hogansville, Lagrange and Newnan, and Lagrange and Palmetto, all in Georgia, are also substantially similar; and freight rates over defendants' line which are higher from New Orleans for the shorter distance to Lagrange than for the longer distance to either Hogansville, Newnan, Palmetto, or Fairburn, violate section 4 of the statute.

938. Higher rates charged by defendants from New Orleans to Lagrange than for longer distances from New Orleans to Hogansville, Newnan, Palmetto, or Fairburn, on like traffic carried under similar conditions and circumstances, and at less cost for the transportation service to Lagrange, are unreasonable and unjust to complainant, and subject him and other dealers at Lagrange, their traffic, and, as a locality, the city of Lagrange itself, to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the localities of Hogansville, Newnan, Palmetto, and Fairburn, traffic thereto, and dealers and merchants doing business therein, in violation of sections 1 and 3 of the act.

939. Freight carried by defendants from New Orleans to either Atlanta or Lagrange, Ga., is through freight and entitled to through service, and the manner in which they conduct the service can not alter the character of such freight so as to make that carried for Lagrange partly local, while the freight to Atlanta is wholly through.

940. Defendants are engaged in carrying traffic over the short-line distance from New Orleans to Atlanta and intermediate points, including Lagrange, Ga., 71 miles southwesterly of Atlanta. There are various competing lines between New Orleans and Atlanta, and there is possible railroad competition between New Orleans and Lagrange. The relations of rates from New Orleans, New York, and other supply markets to Atlanta are, and for a long period have been, the subject of agreement or arbitration between the various lines. The rates from New Orleans to Atlanta are not unreasonably low. The rates from New Orleans to Lagrange are made by combining the New Orleans-Atlanta rates with the local rates of the Atlanta and West Point road back from Atlanta to Lagrange. Under these charges the competing Atlanta dealer can ship from New Orleans to Atlanta and then back to Lagrange as cheaply as complainant can ship direct from New Orleans to Lagrange, and complainant is unable to sell at points on the line between Atlanta and Lagrange. The defendant roads are all solvent, and the delivering carrier for both Atlanta and Lagrange earns 12 per cent annually for its stockholders. *Held*, Upon all the facts, that the rates from New Orleans to Lagrange are unreasonable in themselves and relatively as compared with the rates to Atlanta, and that higher rates from New Orleans to Lagrange than those charged from that city on like traffic to Atlanta are and would be unlawful.

Savannah Bureau of Freight and Transportation *et al. v.* Charleston and Savannah Railway Company *et al.* (7 I. C. C. Rep., 458.)

941. Wrongs caused by improperly adjusted rates over independent lines from competing cities to a common destination can not be corrected without authority to prescribe both the maximum and the minimum rate, and the Commission is not empowered to do either.

942. The "Plant System" of railways carries fertilizer from Savannah, Ga., to Valdosta, and also over the longer distance from Charleston to Valdosta, at no higher rate than it charges from Savannah. The Charleston rate is fixed by the competition of another and more circuitous line from that city to Valdosta, and the Plant System must meet that rate or get no fertilizer business from Charleston. *Held*, That under such circumstances the Plant System may properly make the same rate from Charleston as is made by the longer line, and in so doing it does not unjustly discriminate against Savan-

nah, though if the rate from Charleston to Valdosta were in any way subject to control, the conclusion might be otherwise.

943. Water competition between Charleston and Savannah compels a rate of 80 cents per ton on fertilizer carried by rail between those cities. Rates from Savannah to points in Georgia are fixed by the Georgia railroad commission. Water competition exists also between Savannah and Charleston and Jacksonville, Fla. By that mode of carriage the rate from both cities to Jacksonville is the same, and consequently the same also to points reached by rail from Jacksonville, as against the all-rail lines to those points. Circumstances over which a defendant all-rail line to Montgomery and other points in Alabama has no control also affect fertilizer rates from Savannah and Charleston to such Alabama points in some degree. *Held*, Upon all the facts, (1) That defendants' present differential of 50 cents more per ton from Charleston than from Savannah to points in Georgia other than common points is not unreasonable or prejudicial to Savannah; (2) that charging the same rate from Savannah and Charleston over the defendant all-rail lines to points in Florida in competition with ocean and rail competition from Savannah and Charleston is not unlawful; (3) that a lower differential as between Savannah and Charleston on fertilizer to points in Alabama reached by the Alabama Midland Railway than the differential established as between those cities on fertilizer to points in Georgia does not appear justified, and that sufficient difference is not made in rates to some stations in Florida; and defendants are advised to adjust such rates in accordance with suggestions stated, with leave to complainants to apply for an order if such adjustment is not made.

944. Higher rates charged by defendants on fertilizer from Charleston or Savannah to intermediate points between those cities than they charge over the entire distance between Charleston and Savannah are justified by the existence of water competition.

945. The circumstances and conditions governing the transportation of fertilizer from Charleston to Valdosta and various other stations are rendered substantially dissimilar from those applying in the transportation of fertilizer from Charleston over the same line to shorter distance localities by railway competition at Valdosta and said other stations, which controls and affects the rate, and higher charges on fertilizer to such shorter distance points are not in violation of the fourth section, as interpreted by the United States Supreme Court in Interstate Commerce Commission *v.* Alabama Midland Railway Company. (168 U. S., 144.)

The Chamber of Commerce of the City of Milwaukee *v.* the Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Northwestern Railway Company; The Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Burlington, Cedar Rapids and Northern Railway Company; The Minneapolis and St. Louis Railway Company, W. H. Truesdale, receiver; The Illinois Central Railroad Company. (7 I. C. C. Rep., 481.)

946. Distances by shortest available routes are the proper distances on which to base comparison of differentials in grain rates from the same points of shipment to two different markets, situated as are Milwaukee and Minneapolis with reference to various sources of grain supply.

947. Although carriers serving but one of two competing cities may, by reducing their rates to the city served by them, prevent the correction of an unjust relation of rates to the two places from common points of supply, nevertheless it is the duty of the Commission to condemn such a relation of charges, and to indicate the basis upon which the rates should be readjusted.

948. On complaint of unlawful rates charged by defendant on wheat and other kinds of grain from points of shipment in Iowa, Minnesota, and South Dakota to Milwaukee, as compared with rates on like grain to Minneapolis, and of unlawfully higher rates on wheat than on flour from some of the shipping points. *Held*, That in many instances, and in varying degrees at different points, the differentials in grain rate to Milwaukee above rates in force to Minneapolis from shipping points on and south of the Southern Minnesota Division of the Chicago, Milwaukee and St. Paul Railway give Minneapolis undue and unreasonable preference and advantage, and subject Milwaukee to undue and unreasonable prejudice and disadvantage. That just and reasonable differentials in such rates would be obtained by applying the interstate distance tariff of the Chicago, Minneapolis and St. Paul Railway or the Chicago and Northwestern Railway to the short-line mileage from the several points of shipment to Minneapolis and Milwaukee. That just and reasonable rates to Milwaukee would be made by adding such differentials to rates from time to time in force to Minneapolis, and any

higher rates to Milwaukee would be relatively unreasonable and unjust to that city. That charging any higher rate on wheat than on flour between the same points and on the same line is unjust discrimination and unlawful.

Cattle Raisers' Association of Texas *v.* Fort Worth and Denver City Railway Company and others. (7 I. C. C. Rep., 513.)

949. The Chicago Live Stock Exchange, a corporation whose members are persons engaged in the sale of live stock upon commission at Chicago, and the object of which is to promote the interests of its members in the sale of such live stock, may under section 13 of the act to regulate commerce maintain a proceeding to correct an unreasonable freight rate upon live stock from various points to Chicago; and this, notwithstanding that certain by-laws and proceedings of the corporation are in violation of that statute of the United States commonly known as the antitrust law.

950. The defendant, the Union Stock Yards and Transit Company, having the option under its charter of becoming a common carrier or not, elected to and did become such carrier for dead freight to and from the lines of other carriers in the city of Chicago, but it did not so elect to engage in the carriage of live stock between such lines and its stock yards in Chicago. It imposes a trackage charge on other defendants for the use of its tracks in the transportation of live stock to and from the stock yards, and such transportation is conducted wholly by such other defendants: *Held*, That the Stock Yards Company is not a common carrier engaged in the transportation of live stock within the meaning of section 1 of the act to regulate commerce, and is therefore not subject to regulation in this proceeding.

951. Defendant common carriers undertake to carry live stock through different States to the Union Stock Yards in Chicago, and until delivery is made at such yards the live stock is interstate commerce and subject to the act to regulate commerce.

952. When carriers forming a through line and dividing the through rate also designate a certain rate for performance of a particular service, and it appears in proof that but one of the carriers is responsible for or interested in the latter charge, it is proper on complaint to deal with that particular carrier and that particular rate, irrespective of the other rates which make up the aggregate charge.

953. Section 2 of the act prohibits unjust discrimination between individuals through charging different rates for like service under substantially similar circumstances and conditions, and does not prevent a railroad company from absorbing a terminal charge on live stock in one market and exacting such a charge for terminal service in another city which is reached by a different line.

954. The imposing by a carrier of a terminal charge at one live-stock market, while it does not impose a similar charge at another competing market, is not necessarily an undue preference under the third section of the act.

955. Nor is the imposition at some locality of a terminal charge upon live stock, while no similar charge is imposed on dead freight, necessarily a discrimination, under the third section, against live stock and in favor of dead freight.

956. While the decision of the United States circuit court of appeals upon the same set of facts, but not between the same parties, has not the technical effect of a previous adjudication, it ought to be and is considered in this case conclusive upon the Commission as to the questions involved and decided

957. Live stock shipped to Chicago is necessarily delivered for marketing at the yards of the Union Stock Yards and Transit Company. In reaching its destination, carloads of live stock pass over the tracks of that company, which connect the various lines of the defendants with its yards. For many years the Union Stock Yards and Transit Company has given the use of its tracks for this purpose, and the defendants have performed the service of moving without charge. Beginning June 1, 1894, the stock yards imposed a trackage charge upon each car moving in or out. Thereupon the various defendants agreed to and did impose and collect a terminal charge of $2 per car for the switching of all cars of live stock to the stock yards, in addition to the regular Chicago rate: *Held*, That upon the circumstances of this case the defendants might reimburse themselves for the trackage charge imposed by the Union Stock Yards and Transit Company, but that they ought not to exact any compensation for their services which they previously rendered gratuitously, and that the imposition of more than $1 per car as such terminal charge on live stock was in violation of section 1 of the act to regulate commerce.

958. The case is continued upon the question of reparation, for proof of damages by members of the complaining Cattle Raisers' Association, all questions as to such reparation being reserved until such proof is made.

Cattle Raisers' Association of Texas *v.* Fort Worth and Denver City Railway Company and others. (7 I. C. C. Rep., 555 a.)

959. Defendants filed petition for rehearing, alleging error in the conclusions set forth in the report and opinion of the Commission, wherein it was held that a terminal charge of $2 per car imposed by defendant carriers at Chicago for delivery of live stock at the Union Stock Yards in that city is unreasonable and unjust and that exaction of more than $1 per car for such service is unlawful, under section 1 of the act to regulate commerce. *Held,* Upon hearing of the parties and reconsideration of the record, that there was no error in the original determination; and, further, that the charge complained of and any charge for the terminal service at Chicago in excess of $1 per car constitutes undue prejudice to Chicago under section 3 of the statute.

American Warehousemen's Association *v.* Illinois Central Railroad Company *et al.* (7 I. C. C. Rep., 556.)

960. Any person or association is entitled to complain before the Commission of failure on the part of carriers to publish and enforce transportation or terminal charges, rules and regulations, and that such failure results from special privileges allowed to shippers on many important lines.

961. In proceedings involving issuance of an order concerning the publication and enforcement of transportation or terminal charges, rules and regulations, investigation is useful to enable the Commission to determine what, if any, administrative order should be directed to defendant carriers, and whether such order should be made to apply to all carriers subject to the regulating statute.

962. Upon investigation of alleged unlawful practices of carriers in granting free storage of freights and other specified privileges to shippers. *Held,* That charges made by carriers for transportation and terminal services, and all rules and regulations which in any wise change, affect, or determine the aggregate compensation paid therefor, are required by the statute to be shown upon their published rate schedules; and under such requirement it is the duty of all carriers subject to the act to so publish and thereupon enforce each and every of their charges, rules, and regulations concerning the storage of freights, diversion of cars to shippers' use, distribution of freight in part lots, reconsignment of freight, and all kindred concessions or privileges to shippers, and to refrain from affording any such concession or privilege without due publication thereof in such schedules. That in view of the very general allowance in various forms of some or all of the privileges involved, a general order directed to all carriers subject to the act to regulate commerce should be issued.

In the matter of the application of The Great Northern Railway Company, The Northern Pacific Railway Company, The Burlington, Cedar Rapids and Northern Railway Company, The Chicago and Grand Trunk Railway Company, The Chicago, Burlington and Northern Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago Great Western Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company, The Minneapolis and St. Louis Railroad Company, The Wisconsin Central Lines, The Grand Trunk Railway Company of Canada, The Wabash Railroad Company, The Michigan Central Railroad Company, and The Toronto, Hamilton and Buffalo Railway Company for a suspension of the rule of the fourth section of the act to regulate commerce.

963. Upon application for relief from the operation of the fourth section, and showing that the passenger rates of the Canadian Pacific Railway between points in the Province of Manitoba and contiguous territory and points on the Detroit and St. Clair rivers and easterly thereof in Canada and that portion of New England reached directly by the petitioners were from $5 to $16 less than the rates charged by the American carriers between the same points, and that under such difference in rates the traffic had been entirely diverted from the United States lines, a temporary order was granted authorizing the petitioners to charge less for carrying passengers between such points in either direction than they do for transporting passengers for shorter distances to intermediate points, but not less than those charged by the Canadian Pacific Railway between the same points.

In the matter of the application of The Atchison, Topeka and Santa Fé Railway Company and others for a suspension of the fourth section. (7 I. C. C. Rep., 593.)

964. The Canadian Pacific Railway, operated through the Dominion of Canada, connects with lines which reach various sections of the United States, and that railway is thereby enabled to engage in the carriage of passengers between numerous points in the United States, and of passengers traveling to and from the Klondike region, in the Dominion of Canada, in competition with lines wholly within the United States and subject to the provisions of the act to regulate commerce. This foreign carrier has greatly reduced passenger fares currently in effect on such traffic, including those in force from Boston and other Eastern points to St. Paul, Minn., and points on the Pacific coast, and from St. Paul to Pacific coast destinations, without the concurrence of its connecting American lines; and it makes such reduced rates effective by including therein the separately established rates of such connecting lines. The competing American lines must either meet the reduced rates of such foreign carrier or lose their share of the traffic, and they can not make such reduced rates apply at intermediate points without suffering large loss of necessary revenue: *Held*, That the petitioning American carriers should be relieved temporarily from the operation of the fourth section, so that they may meet the competitive passenger rates of the Canadian Pacific Railway Company without making such rates effective on passenger traffic to or from intermediate points on their respective lines.

Savannah Bureau of Freight and Transportation, John W. Huger, Armin B. Palmer, and Albert L. Stokes *v.* Charleston and Savannah Railway Company; Savannah, Florida and Western Railway Company; Northeastern Railroad Company of South Carolina; Ashley River Railroad Company. (7 I. C. C. Rep., 601.)

965. Passenger fares on the Charleston and Savannah Railway between Savannah, Ga., and points in South Carolina exceed the combined State rates now in force, but most of them, including the fare between Savannah and Charleston, are less than the sum of State rates in effect prior to the South Carolina statute of March 9, 1896, which limits passenger fares in that State to 3½ cents per mile unless otherwise provided by the State railroad commission, and abrogates a special rate of 4 cents a mile provided for this railway in an act of 1884. The interstate fare between Savannah and Charleston is equal to 3.826 cents per mile. Round-trip tickets between Savannah and Charleston, limited to ten days, are sold by the railway for $7, or about 3 cents a mile. The conditions governing local passenger traffic in South Carolina on the Charleston and Savannah Railway and those applying on the interstate passenger service of that railway between Savannah and Charleston are substantially dissimilar: *Held*, That the Federal statute contains no provision under which the interstate fares must necessarily be reduced because the South Carolina mileage rate was lowered by the State act of March 9, 1896, or be varied according to a different mileage rate which may be fixed by the State commission: *Held further*, That the interstate fares of the Charleston and Savannah Railway between Savannah, Ga., and points in South Carolina are not unlawful upon the evidence in this case.

New York Produce Exchange *v.* The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Southwestern Railway Company; The Pittsburg and Western Railway Company; The Chesapeake and Ohio Railway Company; the Cleveland, Cincinnati, Chicago and St. Louis Railway Company; The New York, Lake Erie and Western Railroad Company; The Chicago and Erie Railroad Company; The Grand Trunk Railway Company of Canada; The Chicago and Grand Trunk Railway Company; The Delaware, Lackawanna and Western Railroad Company; The Lehigh Valley Railroad Company; The Allegheny Valley Railway Company; The Pennsylvania Railroad Company; The Philadelphia, Wilmington and Baltimore Railroad Company; The Pennsylvania Company; The Northern Central Railway Company; the Pittsburg, Fort Wayne and Chicago Railway Company; The Pittsburg, Cincinnati, Chicago and St. Louis Railway Company; The Terre Haute and Indianapolis Railroad Company; the New York Central and Hudson River Railroad Company; The Lake Shore and Michigan Southern Railway Company; The Michigan Central Railroad Company; The Pittsburg and Lake Erie Railroad Company; The West Shore Railroad Company; The Toledo, Peoria and Western Railway Company; The New York, Chicago and St. Louis Railroad Company; The Wabash Railroad Company; The New York, Ontario and Western Railroad Company; The Philadelphia and Reading Railroad Company; the Central Railroad Company of New Jersey; the Boston and Albany Railroad Company; The Erie Railroad Company; The Detroit, Grand Haven and Milwaukee Railway Company; The Grand Rapids and Indiana Railroad Company; John K. Cowan

and Oscar G. Murray, as receivers of The Baltimore and Ohio Railroad Company; Thomas M. King, as receiver of The Pittsburg and Western Railway Company; and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, as receivers of The Philadelphia and Reading Railroad Company. (7 I. C. C. Rep., 612.)

966. Railway companies may make whatever rates, form whatever lines, and establish whatever differentials they deem best for the purpose of securing and conducting transportation, provided the just interests of the public are not sacrificed thereby; and whether in so doing they act wisely or unwisely, fairly or unfairly between themselves, is not for the Commission to determine; the jurisdiction of the Commission is confined to inquiring whether the situation which the carriers have created is in violation of the act to regulate commerce.

967. Railway companies are not prohibited by section 3 of the act from preferring one locality over another unless the preference is undue or unreasonable, but a preference which is without legitimate excuse is, in and of itself, undue and unreasonable.

968. Under decisions of the United States Supreme Court (Import Rate Case, Interstate Commerce Commission *v.* Texas & P. R. Co., 162 U. S., 197, 40 L. ed., 940, 5 Inters. Com. Rep., 405, and the Troy Case, Interstate Commerce Commission *v.* Alabama Midland R. Co., 168 U. S., 144, 42 L. ed., 414), railway competition may, but it does not necessarily, justify a preference to a particular locality or commodity; and therefore, granting that discrimination against a locality which is based on such competition is excusable in theory, the question still remains whether under the third section it is undue or unreasonable, and that question is one of fact in each case.

969. Carriers frequently disregard distance in making their rates, and they may lawfully do so under some circumstances; but distance should be regarded whenever possible, and no previous decision is authority for a ruling that a carrier may be compelled to disregard it for the purpose of placing two communities upon a commercial equality.

970. Upon complaint brought on behalf of New York City, and alleging that differentials, allowed by the defendant carriers on grain, flour, and provisions from Chicago and other Western points, of 2 cents to Philadelphia and 3 cents to Baltimore below the rates to New York, are unlawful under section 3 of the act to regulate commerce: *Held*, That the differentials are legitimately based upon the competitive relations of the carriers; that it does not appear upon the present record that the carriers have exceeded the limit within which they are free to determine for themselves, and, accordingly, that the differentials complained of do not result in unlawful preference or advantage to Philadelphia or Baltimore over the city of New York.

Board of Railroad Commissioners of South Carolina *v.* Florence Railroad Company *et al.* G. P. Allen *et al. v.* Carolina Midland Railway Company *et al.* Ridge Fruit and Melon Growers' Association of South Carolina *v.* Southern Railway Company *et al.* (8 I C. C. Rep., 1.)

971. On complaint that rates charged by defendants for the transportation of melons in carloads from shipping points in South Carolina to New York and other points in Northern and Northeastern States were unjust and unreasonable, it appeared that the rates were lower than those in force between the same points on cotton and general merchandise, although greater speed and some other exceptional facilities are involved in the transportation of melons from South Carolina; and that the rates per ton per mile afforded by the melon rates ranged from 7.6 mills to 1.1 cents, and for most of the defendant roads were less than the average receipts per ton per mile from all freight. The evidence was insufficient to warrant an estimate of the cost of production or the results of sales during the shipping season: *Held*, That the rates complained of were not shown to be unjust or unreasonable, and that the petitions should be dismissed without prejudice.

Dallas Freight Bureau *v.* Texas and Pacific Railway Company and others. (8 I. C. C. Rep., 33.)

972. Upon complaint that a rate of 75 cents per hundred pounds on cotton from Dallas, Tex., to New Orleans, La., is unreasonable and should not exceed 55 cents per hundred pounds, it appeared that such rate also applied as a common-point rate from substantially all the cultivated portion of Texas, and that reduction of the rate from Dallas would involve corresponding reductions from nearly the whole State; that the rate to New Orleans is determined by adding a differential of 10 cents to the rate to Galveston, and that such differential is reasonable; that the Texas Railroad Commission fixes the Galveston rate and has reduced such rate from 65 to 60 cents during the pendency of this proceeding, such action resulting, under main-

tenance of the differential, in like reduction of the rate to New Orleans that about 65 per cent of Texas cotton passes through Galveston and about 25 per cent through New Orleans, and reducing only the New Orleans rate would result in diverting more of the traffic from the port of Galveston. *Held*, That while the rate from Dallas to New Orleans does not appear to be altogether reasonable, the Commission is not satisfied, in view of the control exercised and the action taken by the Texas commission, that it ought to interfere with the present adjustment.

973. Circumstances and conditions governing the transportation of freight articles by defendants from New Orleans, La., to Kansas City, Mo., and to Dallas, Tex., an intermediate point on the same line, are rendered substantially dissimilar by the competition of carriers by water and rail from New Orleans to Kansas City which controls and affects the rates, and defendants' present higher charges for the shorter distance to Dallas (which are conceded to be reasonable in themselves) are not in violation of section four of the act to regulate commerce.

B. Brockway et al. *v.* The Ulster and Delaware Railroad Company, The West Shore Railroad Company, and the New York Central and Hudson River Railroad Company as lessee of the West Shore Railroad. (8 I. C. C. Rep., 21.)

974. Petitioners alleged error in that part of the decision and order in Milk Producers' Protective Association *v.* Delaware, Lackawanna and Western Railroad Company (7 I. C. C. Rep., 92) which authorizes a line composed of the Ulster and Delaware and West Shore railroads to charge fourth-group rates on milk and cream shipped to Weehawken from stations on the Ulster and Delaware Railroad which would otherwise take the lower rates ordered in that case for third-group distances over other lines; such exception having been granted by the Commission on account of unusually difficult grades over the Catskill Mountains, and the further fact that all of the milk carried by the Ulster and Delaware is gathered beyond the mountains at distances of 132 to 175 miles from the Weehawken terminal. *Held*, That there was no material error in the original decision, and that the petitions should be dismissed.

Lis man Mill Company *v.* Chicago, Milwaukee and St. Paul Railway Company. (8 I. C. C. Rep., 47.)

975. Defendant's charges on grain originating at points on its Southern Minnesota division, milled in transit at La Crosse, Wis., and forwarded as product to Milwaukee or Chicago are not more than 2½ cents per 100 pounds in excess of its wheat rates from the same points of origin to Milwaukee or Chicago, and such milling rates at La Crosse, as related to defendant's wheat rates, or as affecting the competitive relations of complainant with millers at Milwaukee, are not unjust or otherwise unlawful.

976. La Crosse is on a direct route from points on defendant's Southern Minnesota division to Milwaukee or Chicago, and Minneapolis is not, but the short-line distances from points on that division are considerably less to Minneapolis than to La Crosse. Defendant's charges on wheat from Southern Minnesota division points to La Crosse and Minneapolis are the same, and its rates on flour from those cities to Milwaukee or Chicago are also the same; but La Crosse has milling or transit rates which are less than the sum of such locals, while at Minneapolis shipments to and from the mills are made under established in and out charges. Transit rates at La Crosse on wheat from points on said division to Milwaukee or Chicago bear the same relation to wheat rates from such points that the rates on wheat in and on flour out of Minneapolis bear to grain rates from points on defendant's more northerly Hastings and Dakota division. Alterations in any of defendant's flour rates from Minneapolis are followed by corresponding changes in transit rates at La Crosse. The legality of milling in transit rates is not involved, and what, if any, prejudice results to complainant under transmit milling at La Crosse and regular in and out rates at Minneapolis is not shown. *Held*. That no undue prejudice results to La Crosse or the complaining miller in that city from milling rates enforced by defendant at La Crosse or the relations of such rates to those established by defendant for Minneapolis.

In the matter of the Alleged Disturbance in Passenger Rates by the Canadian Pacific Railway Company. (8 I. C. C. Rep., 71.)

977. Upon investigation of disturbances in transcontinental passenger rates resulting from competition between the Canadian Pacific Railway Company and American lines, it was held that, at the present time, the Canadian Pacific ought not to have a differential on the passenger business between New York and San Francisco.

Phillips, Bailey & Co.; Stratton, Seay & Stratton; Cheek, Webb & Co.; Orr, Hume & Co.; R. F. Weakley & Co.; Orr, Jackson & Co.; J. Cooney & Co.; Jackson, Mathews & Harris; Kirkpatrick & Co. *v.* The Louisville and Nashville Railroad Company; The New Orleans and Northeastern Railroad Company; The Alabama Great Southern Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company, and S. M. Felton, the Receiver thereof; The Nashville, Chattanooga and St. Louis Railway Company; The Illinois Central Railroad Company; The Chesapeake, Ohio and Southwestern Railroad Company, and John Echols and St. John Boyle, the Receivers thereof; The Southern Railway Company. (8 I. C. C. Rep., 93.)

978. Where carriers exact higher rates for a shorter than for a longer haul over the same line in the same direction, the shorter haul being included within the longer, they are amenable, not only under section 4, but also under sections 1 and 3 of the act to regulate commerce.

979. Where the merchants of two localities compete for business in the same territory, discrimination in rates in favor of the one and against the other locality necessarily gives the former an advantage, and works a prejudice to the latter in that competition.

980. The exaction of as high rates for a shorter haul as for a longer haul over the same line in the same direction, the shorter haul being included within the longer, is itself a discrimination, and, if not justified by a substantial dissimilarity of circumstances and conditions, is an unjust discrimination.

981. In respect to competition as justifying discrimination, the Supreme Court of the United States has only gone to the extent of holding that it "may in some cases" be such as, "having due regard to the interests of the public and of the carrier, ought justly to have effect upon rates," and that "the mere fact of competition, no matter what its character or extent," does not "necessarily relieve carriers from the restraints of the third and fourth sections" of the act to regulate commerce. Interstate Commerce Commission *v.* Alabama Midland R. Co., 168 U. S., 164, 167; 42 L. ed., 422, 423.

982. The Supreme Court of the United States, while denying power in the Interstate Commerce Commission to enforce the provision of section 1 of the act to regulate commerce—namely, that all rate charges "shall be reasonable and just"—by orders prescribing reasonable maximum rates, expressly recognizes the authority and duty of the Commission to enforce sections 2, 3, and 4 of the act. Interstate Commerce Commission *v.* Cincinnati, N.O. & T. P. R. Co., 167 U. S., 506; 42 L. ed., 256.

983. The burden is upon the carrier in all cases where a departure from the rule of the law is proved, to show clearly that this departure is justified. It is not sufficient to raise a mere doubt. "Where the matter is not clear, the object and policy of the law should prevail." Missouri P. R. Co. *v.* Texas & P. R. Co., 31 Fed. Rep., 862; 4 Inters. Com. Rep., 434.

984. "Whether the circumstances and conditions of carriage have been substantially similar or otherwise are questions of fact depending on the matters proved in each case." Interstate Commerce Commission *v.* Alabama Midland R. Co., 168 U. S., 170; 42 L. ed., 424; Missouri P. R. Co. *v* Texas & P. R. Co., 31 Fed Rep., 862; 4 Inters. Com. Rep., 434.

985. While it may be in this case that as high rates on sugar and molasses for the shorter haul from New Orleans to Nashville than for the longer hauls to Louisville are justified, the evidence does not show such a substantial dissimilarity of circumstances and conditions as will authorize higher rates on such transportation to Nashville than are charged to Louisville.

Edward Kemble *v.* Boston and Albany Railroad Company and others. (8 I. C. C. Rep , 110.)

986. It is not, as matter of law, a violation of the act to regulate commerce to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through rate.

987. The decision of the Commission in New York Board of Trade and Transportation *v.* Pennsylvania Railroad Company et al. having been overruled by the United States Supreme Court in Texas and Pacific Railway Company *v.* Interstate Commerce Commission (162 U. S., 197; 40 L. ed., 940; 5 Inters. Com. Rep., 405), it follows that carriers are not, as a matter of law, prohibited from making rates from points in the United States to points in foreign countries or from points in foreign countries to points in the United States, of which the inland division or share accruing to carriers within the United States is less than the tariff rate of such carriers on domestic shipments of similar commodities.

988. Through tariffs showing total charges on export traffic from interior points in the United States to destinations in foreign countries can not, owing to the fluctuation in ocean rates, usually be determined and published in accordance with section 6 of the act to regulate commerce; and if the inland carrier publishes and maintains its division of the through export rate it apparently does all that it can do and all that it is required to do under that section; but if the inland carrier, instead of receiving a fixed inland division, makes through rates in fact of which its division fluctuates, a question arises as to the publication of such rates, which is not passed upon in this proceeding. New York, New Haven and Hartford Railroad Company *v.* Platt, 7 Inters. Com. Rep., 323, cited and distinguished.

989. Import and export traffic is not removed from the jurisdiction of the commission by the decision of the United States Supreme Court in Texas and Pacific Railway Company *v.* Interstate Commerce Commission, 162 U. S., 197, 40 L. ed., 940, 5 Inters. Com. Rep., 405, but, on the contrary, the effect of that decision is to extend such jurisdiction; and the commission has full authority to pass upon the grievance of any individual or locality which is alleged to arise from rates upon export or import goods as compared with rates on domestic merchandise.

990. Defendants make two rates on grain and sixth-class merchandise from Chicago to Boston. If the commodity is for local consumption the rate is 2 cents above the rate to New York; but if the commodity is to be exported the Boston rate is the same as the New York rate. The export traffic is delivered to the ocean carrier at East Boston, which is a few miles more distant than Boston from Chicago, and the export rate, which is essentially the inland carrier's division of a through export rate, applies, in fact, only to East Boston. The domestic rate to Boston is substantially as fixed by the commission in Kemble *v.* Lake Shore and Michigan Southern Railway Company, 3 Inters. Com. Rep., 830, 5 I. C. C. Rep., 166. Whether, as matter of fact, the domestic rate to Boston is unreasonably high, or whether the export rate through Boston unduly discriminates against Boston, are questions which were involved in cases heretofore decided by the commission; and their reconsideration in this case is not warranted by any facts developed at the hearing. *Held*, That the fourth section is not violated by the lower export rate to East Boston than the domestic rate for the shorter distance to Boston, and that the petition should be dismissed.

In the matter of alleged unlawful rates and practices in the transportation of cotton by the Kansas City, Memphis and Birmingham Railroad Company and others. (8 I. C. C. Rep., 121.)

991. Defendants' rates on cotton from Memphis to Atlantic and Gulf ports and various Eastern cities are lower than those from intermediate cotton-shipping stations; but whether such rates violate the fourth section of the act to regulate commerce is not determinable upon the record as made in this case.

992. In the practice of "floating cotton" the essential transportation feature is carrying the cotton to a compress, receiving it again in the compressed state, and transporting it to destination at the through rate in force from the point of origin. The practice benefits both the railroad company and the producer and tends to place noncompetitive points upon an equality with more distant competitive localities from which lower rates are in force. It does not unjustly discriminate against dealers in the city of Memphis who decline to take advantage of the privilege. The cotton is graded as well as compressed at the point of stoppage. The destination of the cotton is usually changed at the compress point; the identity of a cotton shipment is not preserved at the point of grading and compression, and the ownership of the cotton may change at the compress station. The question is whether the shipment is to be considered through and entitled to a through rate or as local and calling for application of charges in effect to and from the compress point. *Held* (1), That the carrier may, as part of a contract for through shipment, allow the cotton to be stopped off for the purpose of grading and compression; but the privilege enters into and becomes part of the service covered by the rate and should be specified in the published tariffs. (2) That the determinative features of a through shipment is the contract, and if the cotton starts and proceeds upon a contract for through shipment, as is shown to be the fact in this case, it may be considered as a through shipment and be given the benefit of a through rate. In the matter of alleged unlawful rates and practices in the transportation of grain and grain products by the Atchison, Topeka and Santa Fe Railway Company and others, 7 I C. C. Rep., 240, cited and distinguished.

The Board of Trade of the City of Dawson, Ga., *v.* the Central of Georgia Railway Company and the Georgia and Alabama Railway Company. (8 I. C. C. Rep., 142.)

993. Upon complaint that defendants violate the act to regulate commerce by charging higher freight rates to Dawson, Ga., than to Eufaula, Ala., and Americus and Albany, Ga., towns in the section of country surrounding Dawson, and after giving full and due consideration to the conditions and circumstances, including situation of the localities, possible transportation via the Chattahoochee River, railway competition and the competition of markets, and the basing-point system of rate making as practiced in the South: *Held*, (1) That it is undue preference for the Central of Georgia Railway Company to charge any higher rates on freight from New York or other Eastern cities to Dawson than those which are maintained from the same points of shipment to Eufaula. (2) That it is undue preference for the Central of Georgia Railway Company or the Georgia and Alabama Railway Company to charge any higher rates on freight from Nashville, Cincinnati, and Chattanooga to Dawson than those in effect from the same points to Albany. (3) That it is undue preference for the Central of Georgia or Georgia and Alabama to charge any higher rates on freight from New Orleans to Dawson than those which are in force from New Orleans to Americus or Albany. (4) That so long as the Southern basing-point system of rate making is adhered to it is undue preference for the Central of Georgia or the Georgia and Alabama to charge any higher freight rates to Dawson than those which may be in effect to Americus from any of the points of shipment above mentioned.

Grain Shippers' Association of Northwest Iowa *v.* Illinois Central Railroad Company and others. (8 I. C. C. Rep., 158.)

994. A slight reduction in freight rates from a large extent of territory upon a staple commodity like grain may result in very largely diminishing the revenues of the carrier, as well as determining whether or not grain can be raised at a profit, and, ultimately, whether it shall be raised at all. Questions of this nature, involving as they do great interests to both parties, and interests which mean not the loss or gain of a given sum for a single year, but similar loss or gain year after year, ought not to be determined except upon some reasonably satisfactory showing, if the material for such showing exists.

995. While value is a most important element to be considered in fixing rates, it plainly can not be made an arbitrary standard independent of all other considerations.

996. If a carrier can profitably make a low rate for the purpose of obtaining traffic in existence which would otherwise pass over a competing line, then it may profitably, under some circumstances, make a low rate for the purpose of bringing into existence traffic which would not otherwise pass over any line.

997. The capitalization of a railroad, to have consideration in cases involving the readjustment of rates, should be accompanied by a history of the capital account, the value of the stock and various securities, and the actual cost and value of the property itself. To make the capital account of railroads the measure of legitimate earnings would place, as a rule, the corporation which has been honestly managed from the outset under enormous disadvantages.

998. It is not enough for defendant carriers so say, in a case involving the relation of rates, that competition justifies or requires the thing which is done. Something must be known of the nature and extent and effect of that competition.

999. The transportation of grain eastward from Kansas City and from Sioux City and other points in the territory adjacent to Sioux City is subject to competition between the carriers; but while reduced rates have resulted from the competition at Kansas City the competition in northwest Iowa has been more effectively restrained by an agreement formerly in effect, and, since such agreement was canceled, by continuance of rates without substantial reduction. The rate on corn to Chicago from most points in western Iowa is 17 cents per 100 pounds. Examination of the rates and rate changes for a period of years indicates that a rate of 15 cents on corn from Kansas City to Chicago should be applied at all Missouri River points, but the evidence is not sufficient to enable a definite conclusion. It does appear, however, that the rate on grain from Sioux City and other points in a limited section of northwest Iowa are too high. *Held*, That the 19-cent rate on corn from Sioux City and other points in adjacent territory should be reduced, the 17-cent rate on corn now in effect from most points in western Iowa should

be extended to Sioux City and points in Iowa on and east of the Sioux City and St. Paul Railroad (now part of the Chicago, St. Paul, Minneapolis and Omaha system), and corresponding reduction should be made from other points in southeastern South Dakota. *Held further*, That while no opinion is expressed as to what is the proper relation of the rates on wheat and corn from Sioux City and adjacent territory, the difference of 4 cents which now prevails from most shipping points in that section should not be exceeded.

1000. An order granting reparation to shippers for an unreasonable rate must be based upon evidence and a finding that the rate was unreasonable at the time it was paid.

In the matter of export rates from points east and west of the Mississippi River. (8 I. C. C. Rep., 185.)

1001. It is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates whereby the product of one section of the country is assigned to one market and the product of another section of the country to another market.

1002. In 1898 defendants' rates to New York on export corn were 19 cents per 100 pounds from Peoria and 17½ cents from Chicago, and from the Mississippi River the 17½-cent Chicago rate applied as a proportional rate on export corn coming from west of that river. In January and February, 1899, the proportional rate from the river was made 13½ cents, a reduction of 4 cents; the Chicago rate was made 16 cents, and the Peoria rate 17½ cents, a reduction of 1½ cents. This rate from the river had always been higher, or at least no lower, than the rate from Chicago. Higher rates are in effect on export corn originating at the river crossings, and local and proportional rates considerably above the proportional export rate are also in force from river points on domestic shipments. Under former rates Illinois corn went forward freely for export through Atlantic ports, but under present rates it is stored in elevators or cribbed upon the farms, while Iowa corn moves in large quantities across Illinois farms and through Illinois markets on its way to the seaboard and foreign points. Large quantities of corn are held in store at Chicago and Peoria. Through rates to the Atlantic seaboard apply from a large number of points in Illinois, but from numerous other localities in that State the corn must be shipped under local rates to and from points like Chicago and Peoria. Some of these through rates and many of the combination rates are higher than through or combination rates on export corn from points in Iowa. Facts relating to competition of routes leading to Gulf ports and to application of "transit rates" on export corn are stated. *Held* (1), That through or total combination tariff rates on export corn from points in Illinois, which are higher than the through or combination rate on corn from any point in Iowa, are unlawful under section 3 of the act to regulate commerce. (2) That the evidence is not sufficient to enable the Commission to determine what, if any, other correction should be made in the present rate relations, and that the boards of trade of Chicago and Peoria, complainants herein, have leave to apply for further hearing in regard to the effect of the changes made by defendants in the general rate adjustment.

1003. The propriety of present rates in force on Iowa export corn is not considered, and no opinion is expressed concerning the legality of the "transit system," as allowed at Mississippi River crossings, Peoria and Chicago, nor as to whether the statute sanctions a system of local and proportional rates on domestic and export shipments from the Mississippi River, which results in four different rates on corn from the east bank of that river to the Atlantic seaboard.

1004. When rates established to apply between points within a single State are applied as part of combination rates on transportation between different States, such State rates, as well as the interstate rates with which they are combined, must be published at stations and filed with the Commission, as provided in section 6 of the act to regulate commerce.

In the matter of relative rates upon export and domestic traffic in grain and grain products and of the publication of tariffs relating to such traffic. (8 I. C. C. Rep., 214.)

1005. The act to regulate commerce applies to the transportation of export and import traffic, and the jurisdiction of the Commission over such traffic is not denied, but is distinctly affirmed and rather enlarged by the decision of the U. S. Supreme Court in Texas and Pacific Railroad Company *v.* Interstate Commerce Commission, 162 U. S., 197; 40 L. ed., 940; 5 Inters. Rep., 405.

1006. The act to regulate commerce does not, as matter of law, prohibit a carrier by railroad from making a through rate from a point within the United States to a foreign destination of which its division shall be less than the amount charged by it for the corresponding transportation of domestic merchandise to the port of export. Nor is it, as matter of law, in violation of the act for such carrier to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through rate. Texas and Pacific Railroad Company *v.* Interstate Commerce Commission, 162 U. S., 197; 40 L. ed., 940; 5 Inters. Com. Rep., 405, cited and applied. Kemble *v.* Boston and Albany Railroad Company, 8 I. C. C. Rep., 110, cited and approved.

1007. It is a question of fact whether rates upon export or import traffic, as well as those upon domestic traffic, are in contravention of the provisions of the act to regulate commerce.

1008. The act to regulate commerce was intended to and does apply, not only in cases of direct injury to particular individuals or industries, but also in cases involving indirect injury to the community as a whole, and in the absence of some justifying reason, it would not be right for American railroads to permanently transact business for foreigners at a less rate than that for which they render a corresponding service to American citizens.

1009. Market conditions, sometimes in case of wheat, but seldom in case of corn, may justify an export rate through the port of New York somewhat lower than the domestic rate, and Philadelphia, Baltimore, Norfolk, and Newport News usually take rates which are certain differentials below the New York rate on both domestic and export traffic. During the period of closed lake navigation the export and domestic grain rates to New York and the other ports mentioned should ordinarily be the same. Rates to other ports, including Boston and ports on the Atlantic north of Boston, and Galveston, New Orleans, and other Gulf ports may perhaps be properly made lower on export than on domestic traffic to enable them to compete for the export business. Such an adjustment of rates would be to the advantage of the carrier, and just alike to the American consumer and the American producer. But as the problem is primarily one for the carriers rather than this Commission, and some rate changes have been made by them during the progress of this proceeding, and the testimony indicates that the present disparities between domestic and export rates will not become permanent, no order is made in relation to this branch of the case.

1010. In the application of export grain rates the carriers should in no case make the rate from any point to the seaboard less than that from any intermediate point on the same line.

1011. Carriers engaged in the transportation of export flour from Minneapolis at a rate which is 1½ cents less than the domestic rate to the port of export refuse to make any corresponding concession to intermediate millers. *Held*, That this is unjust and unlawful discrimination against such intermediate traffic, and that whatever line participates in such lower export rate on flour from Minneapolis must make a corresponding rate upon similar traffic from intermediate points.

1012. There may be instances where a carrier should be permitted to meet railroad competition without reference to its intermediate territory, but when the very existence of an important industry depends upon the carrier being required to treat intermediate territory as it does the more distant territory, the rule of no greater charge for the shorter distance clearly applies.

1013. Carriers largely engaged in transporting export flour have for many years made the same rate on wheat and flour, and such long-continued practice is evidence against any difference in rate on those commodities; but the presumption is not irrebuttable, for if it were the carriers could never change their tariffs or classifications.

1014. The profit to American millers in manufacturing flour for export is from 1 to 3 cents per 100 pounds, but the freight rates on wheat and flour for export show a difference in favor of the English miller of from 4 to 11 cents per 100 pounds, and, other things being equal, such discrimination is clearly prohibitive upon the American manufacturer. The published railroad rates on both wheat and flour for export have been the same up to a recent period, and the carriers have exacted such rates except where lower rates on wheat were induced by competition. Water competition on the Great Lakes limits rail rates to the various ports on both wheat and flour during the navigation season, and to a degree before the opening and after the close of navigation, and the published and actual water rates on wheat have been from 2 to 4 cents lower than those on flour To a limited extent the cost of service may be greater in the transportation of export flour

than in that of export wheat. The export rate on flour includes delivery on board ship, while the rate on wheat ordinarily does not, and at New York an additional charge of about 1¼ cents per bushel for loading wheat is made. Exportation of flour has steadily increased, but for the last six years the increase has not been marked, and a decrease is shown by comparing exports in 1894 and 1898. *Held*, (1) That public policy and good railway policy alike seem to require the same rate on export wheat and export flour, but that the duties of the Commission are confined to administering the act to regulate commerce, and in view of all the conditions shown in the investigation a somewhat higher rate on export flour than on export wheat is not in violation of that statute. (2) That the published difference in rates is too wide, and that the rate on flour for export should not exceed that upon export wheat by more than 2 cents per 100 pounds. (3) That the relation of rates on domestic shipments of flour and wheat is not involved in this decision, as the export and domestic freights are handled under different conditions.

1015. Rates on export traffic must be published and filed in accordance with the provisions of section 6 of the act to regulate commerce.

1016. So-called through export rates made by adding the ocean rate, whatever it may be, to the inland rail rate, whatever it may be, are not analogous to joint rates made by joint arrangement between railway carriers subject to the statute in the sense that the total rate must be published and filed, and it is enough if the railway carrier publishes and maintains its own rate to the seaboard. But if there is in fact such a joint arrangement that the rate is a joint rate under the sixth section of the act to regulate commerce, then the entire through rate should be published, and not the inland division, which in that case might vary, while the entire rate remains the same.

A. J. Gustin *v.* The Atchison, Topeka and Santa Fe Railroad Company, and Aldace F. Walker, John J. McCook, and J. C. Wilson, Receivers thereof; The Burlington, Cedar Rapids and Northern Railway Company; the Chicago and Alton Railroad Company; The Chicago, Burlington and Northern Railroad Company; The Chicago, Burlington and Quincy Railroad Company; The Chicago Great Western Railway Company; The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Northwestern Railway Company; The Chicago, Rock Island and Pacific Railway Company; The Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Hannibal and St. Joseph Railroad Company; The Illinois Central Railroad Company; The Iowa Central Railway Company; The Kansas City, St. Joseph and Council Bluffs Railroad Company; The Minneapolis and St. Louis Railway Company, and W. H. Truesdale, Receiver thereof; The Missouri Pacific Railway Company; The Rock Island and Peoria Railway Company; The St. Louis, Keokuk and Northwestern Railroad Company; The Wabash Railroad Company; The Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers thereof; The Burlington and Missouri River Railroad in Nebraska. (8 I. C. C. Rep., 277.)

1017. The defendants, having engaged under their tariffs and course of business in the through transportation of traffic from Chicago and other points to Kearney, Nebr., over continuous lines formed by their connected roads, are required by the act to regulate commerce to make their rates on such transportation reasonable and otherwise in conformity with the provisions of that statute, and such duty is not avoided by the fact that the rates to Kearney may be combinations of rates to and from Omaha.

1018. The necessities of carriers often demand, and traffic conditions frequently warrant them in exacting, a share of through rates which gives them more per mile than that which results to a connecting carrier from the division accepted by it.

1019. The rate per ton per mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable; but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it can not therefore be accepted as controlling in determining the reasonableness of rates.

1020. Combination rates always afford an advantage to the basing point, and entail some disadvantage upon the town to which the combined rates are applied, and when traffic is brought to the two places to be distributed in common territory the preferences and prejudices resulting from such rates must generally be held unreasonable and undue.

1021. Freight rates from Chicago and other eastern points to Kearney, Nebr., made by combining rates to and from Omaha, a point on the Missouri River, are not unreasonable in amount, and the evidence was insufficient upon the question whether such rates subject Kearney merchants to unlawful disadvantage.

In the matter of alleged violations of the act to regulate commerce by the St. Louis and San Francisco Railway Company. (8 I. C. C. Rep., 290.)

1022. The greater charge enforced by the respondent company for the shorter distance from Marshfield, Mo., than for the longer distances from Springfield and other more westerly sections, in the transportation of live poultry in carloads to Chicago, constitutes a departure from the general rule of the fourth section, which the carrier was bound to justify in this proceeding.

1023. The higher rate from an intermediate locality to a common destination also constitutes a prejudice to that locality and shippers and traffic therefrom, and a preference to the more distant localities and shippers and traffic therefrom, which, if found to be without sufficient excuse, must be held unreasonable and undue, and therefore in contravention of the third section.

1024. Respondent is engaged with other carriers in the through transportation to Chicago of freight from numerous points on its road, including Springfield and Marshfield, and it can not lawfully call itself merely a local carrier from Marshfield while engaged in through carriage from Springfield and other points on its line, and thereby justify higher rates to Chicago for the shorter distance from Marshfield than for the longer distance from Springfield and more distant points of shipment. Cincinnati, New Orleans and Texas Pacific Railroad Company *v.* Interstate Commerce Commission, 162 U. S., 184, 40 L. ed., 935; 5 Inters. Com. Rep., 391; 16 Sup. Ct. Rep., 700, cited and applied.

1025. The rates enforced by the respondent company on live poultry in carloads to Chicago are higher from Marshfield than for the longer distances from Springfield and other more distant stations on its line, to and including Columbus, Kans. It meets the competition of other roads at Springfield and various junctions to the west of Springfield, yet nowhere west of Springfield does the respondent or any of its competitors make the greater charge for a shorter than for a longer distance on this traffic. Such rates on live poultry from Springfield and points west thereof are not unreasonably low. The respondent makes as low a rate to St. Louis from Marshfield as from Springfield. The circumstances and conditions applying from the points involved on the traffic in question are not substantially dissimilar. The investigation covered freight articles generally, but the testimony was confined to live poultry. *Held*, (1) That the respondent has failed to justify such higher rate from Marshfield than from Springfield and other more westerly stations for the carriage of live poultry to Chicago, and that by keeping such higher rate in force it is acting in violation of the fourth and third sections of the act. (2) That the respondent should not insist upon making higher charges to Chicago from Marshfield than from more distant points of shipment upon other kinds of traffic, unless it is prepared to justify such action by showing an essentially different state of facts than appears in this proceeding.

Board of Railroad Commissioners of the State of Kansas *v.* Atchison, Topeka and Santa Fe Railway Company et al. (8 I. C. C. Rep., 304.)

1026. Distance is undoubtedly a factor, and perhaps ought to be a much more important factor, in the determination of rates, but in the present case where the distances from the grainfields of Kansas to Kansas City, St. Louis, and Galveston vary from 100 to 1,100 miles, any attempt to adjust the rates on grain to those cities upon the sole basis of the rate per ton per mile would be impracticable.

1027. A decision by the Commission in one case is not necessarily controlling in all similar cases. Such decision hardly has the effect of an estoppel, and there is not the same reason for applying the maxim stare decisis which exists in courts of law. But when the relation in freight rates determines where and how business should be done, the decisions of this Commission fixing or approving a given relation should only be reversed for imperative reasons.

1028. The changes which have taken place in conditions governing the transportation of wheat and flour from Kansas points to destinations in Texas, although they have been material in some respects, are not sufficient to warrant interference in this case with the differential making the rate 5 cents higher on flour than on wheat, which was approved by the Commission in Kauffman Milling Company *v.* Missouri Pacific Railway Company, 4 I. C. C. Rep., 417; 3 Inters. Com. Rep., 400.

1029. Carriers of corn and corn meal from Kansas points to destinations in Texas enforce a differential of 7 cents per 100 pounds more on corn meal than on corn, and such difference prohibits the shipment of corn meal ground in Kansas points into Texas territory. The difference in cost of service need

not exceed 3 cents per 100 pounds, and the difference in value, greater liability to injury, and other conditions surrounding the transportation of such commodities do not justify the greater difference in the rate. *Held*, That the difference in rate of 7 cents against corn meal and in favor of corn unjustly discriminates against Kansas millers, and that the differential should not exceed 3 cents per 100 pounds.

1030. Several defendant carriers engaged in transporting wheat and corn from points in Kansas and Missouri and intermediate points to Galveston and New Orleans make lower export rates on those commodities from Kansas City, Mo., or points in that vicinity, than from some of the intermediate stations on their respective lines. These export rates are much lower than the corresponding domestic rates, in case of which the fourth section is invariably observed. The circumstances and conditions governing transportation of grain from the longer and shorter distance points are not substantially dissimilar. *Held*, That the higher rates from such intermediate points subject those localities to undue prejudice, and that if the carriers are allowed to make these low export rates they should in making them treat all intermediate territory alike, and desist henceforth from charging higher rates from the nearer stations than those in effect from the more distant points.

1031. In view of present conditions, no opinion is expressed as to the reasonableness of export grain rates from Kansas points to Galveston, or the reasonableness of local grain rates from Kansas and Missouri into Texas, or the relation of east-bound and south-bound export rates from Kansas points.

Chicago Fire Proof Covering Company *v.* Chicago and Northwestern Railway Company and The Pennsylvania Company. (8 I. C. C. Rep., 316.)

1032. The provision in section 3 of the act, that "this shall not be construed as requiring any such common carrier to give the use of its track or terminal facilities to another carrier engaged in like business," refers to facilities for interchanging traffic between connecting lines; and providing such facilities is not involved in this proceeding.

1033. The varying cost to shippers in delivering freight to the carrier for shipment can have no bearing in a case which has sole reference to what are unlawful rates from the carriers' stations.

1034. Upon complaint that defendants charge unlawful rates on asbestos articles from Summerdale, Ill., to Lima, Ohio, and other eastern points, it appeared that Summerdale, although within the city limits of Chicago, is a station on the Chicago and Northwestern Railway, which for purposes of shipment and carriage is independent of the main depots of that company in Chicago; that it is a shorter-distance point, and Milwaukee and other places on the Milwaukee division of the Chicago and Northwestern north of Summerdale are longer-distance points, over defendants' established through line with reference to less than carload shipments to eastern destinations; that defendants have through rates in effect from stations north of Chicago, but on traffic from Summerdale the Pennsylvania Company insists upon a higher charge made by adding rates to and from the point of connection in Chicago; that these through rates were not denied to Summerdale before it became part of Chicago by extension of the city limits; and that the circumstances and conditions governing the transportation are not dissimilar. *Held*, That defendants' higher less than carload rates on asbestos articles from Summerdale than from points north of Chicago to and including Milwaukee, on shipments destined to Lima, Ohio, and other eastern points are in violation of sections 3 and 4 of the statute.

1035. Defendants offer to carry asbestos material at established through joint rates to eastern points from stations north of Chicago, including Milwaukee, and by denying such rates on like shipments from Summerdale, an intermediate station, and exacting higher rates thereon, they subject complainant to undue prejudice in its competition with other dealers for the sale of asbestos articles and shipment thereof to eastern localities.

1036. Notwithstanding the contention that higher rates are lawfully in force on shipments from Summerdale than from Milwaukee and other more distant points to eastern localities, it appears that, under the tariffs in force over defendants' through line, the rates from Summerdale were actually the same as those from more distant stations, including Milwaukee, at the time a less than carload lot of asbestos pipe covering was shipped by complainant from Summerdale to Lima, Ohio. *Held*, That in failing to apply the through Milwaukee-division rates from Summerdale on such shipment the defendants acted contrary to the requirements of section 6 of the act, and that complainant is entitled to recover the overcharge.

1037. Apparently the rates on carload shipments to the east from Summerdale should be as low as those in force to the same destination from Milwaukee, but as carload lots take somewhat different routing than less than carloads from Summerdale, and the evidence as to carloads was not specific, no opinion on that branch of the case is expressed, and complainant is granted leave to apply for further hearing.

George L. Castle *v.* Baltimore and Ohio Railroad Company. (8 I. C. C. Rep., 333.)

1038. Common carriers are bound by every principle of justice and of law to accord equal rights to all shippers who are entitled to like treatment, both in the receiving of supplies and the shipment of their products, and a carrier who, under any pretext whatsoever, grants to one shipper an advantage which it denies another violates the spirit and thwarts the purpose of the law.

1039. Complainant alleged that defendant had unjustly discriminated in rates and facilities for the transportation of sand against him and in favor of his competitors, but the evidence was not sufficient to show breach of legal duty on the part of the defendant, and the complaint was dismissed without prejudice.

George Tileston Milling Company *v.* Northern Pacific Railway Company.

City of St. Cloud, Minn. *v.* Northern Pacific Railway Company. (8 I. C. C., Rep., 346.)

1040. Rail lines between St. Paul and Duluth are part of lake and rail routes to New York, and such lines, operating under through rates with the lake carriers, can not be heard to set up water carriage as competition via the lakes, in excuse of the rates which they themselves make in furtherance of that competition.

1041. Competition between railways does not, in and of itself, create dissimilarity in "circumstances and conditions," but it is a factor which may and perhaps ought to be taken into account in cases arising under the fourth section of the statute. The question is largely one of fact, and is in each particular instance whether, in view of all the facts surrounding that individual instance, the circumstances and conditions are so dissimilar as to justify the greater charge for the shorter distance; and in deciding this question the interests of all parties, the carrier as well as the public, must be considered. Citing Interstate Commerce Commission *v.* Alabama Midland Railway Company, 168 U. S., 144; 42 L. ed., 414; 18 Sup. Ct. Rep., 45.

1042. The fact that one competing carrier has the long line does not create a dissimilarity in circumstances and conditions which justifies it in disregarding the rule of the fourth section, while competing short lines are bound by that rule. To permit the carrier by the long line to meet lower competitive rates at a more distant point without making as low rates from intermediate stations, while its competitors are obliged in all cases to make no higher charge from intermediate points on their lines, would place those competitors at the mercy of such long-line carrier. When a carrier comes into the field of competition, whether it be as the long line or as the short line, it comes subject to the same limitation as every other competitor.

1043. To allow one carrier to meet the rates of its competitors until it is found to have done something more than meet such rates does not constitute a workable basis, for the causes which lead to rate fluctuations are so intangible, often resting upon mere suspicion, that any attempt to determine in an individual case what those causes were would ordinarily be futile, and to enforce such a rule would stifle that competition which the act to regulate commerce was intended to secure.

1044. Lower rates are in effect by the defendant and other lines on flour and other traffic from St. Paul, Minneapolis, Anoka, Elk River, Princeton, and Milaca, Minn., than from St. Cloud, Minn., to eastern points; and on coal and other westbound freight the rates from eastern points are higher to St. Cloud than to the other points specified. The disparity in rates against St. Cloud greatly prejudices that city, millers, merchants, and consumers, in that locality, and producers of grain in the section surrounding St. Cloud in comparison with the other places mentioned and competing millers and dealers therein. The defendant competes over a long line with three other rail lines between Duluth and other Lake Superior points and St. Paul and Minneapolis for traffic to and from the East, and St. Cloud is an intermediate point on its line, but it carries only an insignificant amount of such competitive traffic. In entering upon such competition it accepted the rates of its competitors, but being engaged in the traffic it is able to control the through rate equally with the other competing lines, and of all these lines only the defendant makes a higher charge to or from any intermediate point. *Held,* upon consideration of the whole situation,

That defendant carries this business from and to St. Paul, Minneapolis, Anoka, and Elk River "under substantially similar circumstances and conditions" with those existing in case of business to and from St. Cloud, and that the higher rates to and from St. Cloud, the intermediate point, are in violation of the fourth section.

1045. Allowing railway competition, such as is shown in this case, to constitute an exception to the rule of the fourth section would permit throughout the whole country the making of higher rates to or from intermediate points, thereby disarranging business conditions and producing endless discriminations which do not now exist. Such application of the long and short haul clause was not intended by the act, and it should not be permitted in due consideration of the interests of all parties concerned.

1046. A rate can seldom be considered "in and of itself." It must be taken almost invariably in relation to and in connection with other rates, for the freight rates of this country, both upon different commodities and between different localities, are largely interdependent, and it is because they do not bear a proper relation to one another, rather than that they are absolutely either too low or too high, which most often gives occasion for complaint.

D. K. Spillers & Co. *v.* Louisville and Nashville Railroad Company. (8 I. C. C. Rep., 364.)

1047. Defendant instructed its agents to disregard the regular published tariff rates to Gallatin, and to charge the lower combination of rates to and from Nashville. It also had this rule of applying combination rates when less than tariff rates were in force at other stations on its line. Instructions to that effect were issued in a separate printed circular, and did not appear, nor were they referred to in any way, upon its regular published tariffs. *Held*, That this practice is unlawful, and that, to be in compliance with the act, any rule which operates to alter, modify, or change established rates must be fully and clearly set forth upon the published tariffs of rates and charges to be affected thereby.

Trades League of Philadelphia *v.* Philadelphia, Wilmington and Baltimore Railroad Company; New York, Philadelphia and Norfolk Railroad Company; Norfolk and Western Railway Company, and Southern Railway Company. (8 I. C. C. Rep., 368.)

1048. Iron-pipe fittings shipped in cases from Northern points to Southern territory take second-class rates, but if shipped in casks, barrels, or kegs a special iron rate, lower than the sixth-class rate, is applied on any quantity. The barrel package is cheaper than the case, except when the quantity is insufficient to fill a barrel; but when that happens a keg can be used for packing, with but little inconvenience or additional expense, and the lower special iron rate is thereby secured. The choice is wholly with the shipper to pay the higher rate on fittings in cases or the lower rate on fittings in kegs or barrels. Such a classification does not operate of itself to aid dishonest shippers in underbilling goods of greater value, and the opportunity for false billing would not be lessened by giving the special iron rate to pipe fittings packed in cases. No ground of distinction appears in this respect between pipe fittings and numerous other articles included in the special iron list and taking higher rates when packed in boxes, and reclassification of all these other commodities is not warranted by the facts in this case. *Held*, That the defendant carriers have not exceeded the limits of their discretion in placing iron-pipe fittings packed in cases in a higher class than iron-pipe fittings packed in kegs or barrels, and that such action is not unreasonable or otherwise in violation of the act to regulate commerce.

In the matter of the application of certain railroad companies for a further extension of time within which to comply with the provisions of the safety-appliance act. (8 I. C. C. Rep., ——.)

1049. The petitioning carriers, and all other common carriers engaged in interstate commerce by railroad, granted a further extension of seven months from January 1, 1900, within which to comply with the provisions of sections 1 and 2 of the safety-appliance act of March 2, 1893.

Savannah Bureau of Freight and Transportation; O'Brien & Carter; Coleman & McColskey; Bullock Bros.; O. L. Williams; Robert Melton & Co.; E. M. Godwin; Coleman & Hayes Bros.; White & Williams, and J. N. Daniel *v.* Louisville and Nashville Railroad Company; Florida Central and Peninsular Railroad Company; Savannah, Florida and Western Railway Company; Charleston and Savannah Railway Company; Alabama Midland Railway Company; Clyde Steamship Company; Ocean Steamship Company of Savannah, Ga. (8 I. C. C. Rep., 377.)

1050. Complainants alleged that defendants' rates on sugar and other commodities from New York to Chipley and other points in Florida were unlawful

as compared with the rates for the greater distances to Pensacola, Mobile, and New Orleans, but the evidence was insufficient to warrant a conclusion.

1051. Rates charged over defendants' line on bacon and other commodities from Savannah, Ga., to stations in Florida on the Louisville and Nashville Railroad were not shown to be unlawful in comparison with rates on like traffic to those stations from New Orleans or Pensacola.

1052. Defendants' rate on uncompressed cotton from stations in Florida on the Louisville and Nashville Railroad to Savannah was $2.75 per bale at the time of hearing, when complaint was filed, and for some years prior thereto, but subsequent to the hearing this rate was increased 55 cents—to $3.30 per bale. The rates to Mobile and New Orleans were and still are, respectively, $2 and $2.50 per bale. *Held*, That the rate of $2.75 per bale to Savannah was not unlawful, but that the whole advance of 55 cents was unlawful, and any higher rate on such cotton to Savannah than the former difference of 25 cents per bale above the rate in force from the same stations to New Orleans violates sections 1 and 3 of the statute.

1053. A carrier can not lawfully establish and maintain an adjustment of rates which in practice prevents shippers on its line from availing themselves of a principal market, which they have long been using, and confers a substantial monopoly upon a new market in which, for reasons of its own, it has greater interest.

1054. When a carrier makes rates to two competing markets which give the one a practical monopoly over the other because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest and disregards the statutory requirement of relative equality as between persons, localities, and particular descriptions of traffic.

1055. If a railroad company can not secure other than an unreasonably low share of a joint rate to a seaport on another road, it may be justified in declining to join in such a rate, especially when it can take the traffic to a seaport reached by its own road; but a carrier engaged in transportation over the through line finds no such justification when it is able to secure for itself a share of the joint rate which fully equals the rate established by it for purely local service over like distances on its own road.

1056. The Louisville and Nashville Company makes certain local rates on rosin and turpentine from stations on its Pensacola and Atlantic division in Florida to Pensacola, Fla., and it joins with connecting carriers in making certain through group rates from the same stations to Savannah, Ga. For its service to the junction point the Louisville and Nashville exacts shares of the through joint rates to Savannah which greatly exceed its purely local rates for like distances to Pensacola, while the shares accepted by its connecting carriers are reasonably low. Upon consideration of all the facts and circumstances, *Held*, (1) That the shares of the Louisville and Nashville Company in the through rates to Savannah are unreasonable and unjust and operate to make the entire through rates unlawful under sections 1 and 3 of the act in comparison with the rates to Pensacola. (2) That rates on rosin and turpentine from such Pensacola and Atlantic division stations to Savannah should be adjusted to the rates to Pensacola by adding to the local rates of the Louisville and Nashville Company for the distance to Pensacola which is nearest to the distance from each station to River Junction the present share accepted by the carriers to Savannah from River Junction; provided, however, that on shipments of turpentine to Savannah from stations east of Mossyhead the Louisville and Nashville Company should have more than its local rate for the like distance to Pensacola, and that such rate should be determined by adding a differential of 6 cents to the Louisville and Nashville rate from Sneads to Pensacola, the carriers east of River Junction accepting their present share from such stations east of Mossyhead.

City of Danville and others *v.* Southern Railway Company and others. (8 I. C. C. Rep., 409.)

1057. Under section 4 of the act the question for the Commission is one of fact, and the interests of the producing market, the consuming markets, and the carriers are to be considered in determining whether upon the whole situation there is such dissimilarity of circumstances and conditions as justifies the rates in question. Louisville and N. R. Co. *v.* Behlmer, 175 U. S., 648, cited and applied.

1058. One case can seldom be an exact precedent for another, for each traffic situation presents points of difference, and each complaint must be considered upon its own peculiar facts.

1059. The development of the Southern Railway into a great system, through consolidation and improvement of worthless properties, is a legitimate enterprise which has benefited the whole territory affected thereby; and

while those who conceived and executed it have no right to exact a return upon an extravagant capitalization, whatever has honestly and in good faith gone into the enterprise should be protected. But the people living in such territory are also entitled to protection, and the Southern Railway, by virtue of the fact that it has obtained possession of and now controls the avenues of communication by rail between the city of Danville and the outside world, has no right to deprive that community of the competitive advantages which the enterprise of its citizens in one way or another has secured, and upon the strength of which business conditions have grown up; it must recognize the geographical position and the commercial importance of the city of Danville.

1060. The system of rate making into Southern territory, under which, on traffic from St. Louis, Chicago, and other points, the rates to Danville are the sums of locals to and from the Ohio River, and the rates to Lynchburg are made on a much lower joint-rate basis, is utterly unreasonable. No opinion is expressed as to the system as a general scheme, but if the carriers desire to make rates in that manner they must so adjust their charges as not to annihilate the city of Danville. Rates to Danville must be adjusted with relation to rates to competitive localities, like Lynchburg, and the carriers from the point of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business.

1061. In determining the Danville rate from New Orleans and Western points of shipment, the Southern Railway, which dominates the situation, should, instead of adding to the rate to Lynchburg the local back from Lynchburg, recognize that the business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a through rate.

1062. Under all the circumstances and conditions, freight rates from Northern and Eastern cities, from Western points of shipment, and from New Orleans to Lynchburg, Va., may properly be somewhat lower than the rates to Danville, Va., but the present rates to Danville as compared with those in force to Lynchburg are excessive under the fourth as well as the third section of the act. The rates from Northern and Eastern cities to Danville and the rates from New Orleans to Danville on sugar, molasses, rice, and coffee should not exceed those to Lynchburg by more than 10 per cent. The rates between Danville and the West, including the rate on tobacco to Louisville, Ky., should not exceed those between Lynchburg and the West by more than 15 per cent.

1063. Case held open and ordered suspended to await readjustment of rates by the Southern Railway and connecting carriers.

Thomas F. Sprigg, Geo. B. Skinner, Sigmund Kann, Joseph A. Rohr, and Edw. M. Kennard, individually and as a committee representing commutation-ticket holders between Baltimore and Washington, *v.* Baltimore and Ohio Railroad Company, John K. Cowan and Oscar G. Murray, receivers, and Baltimore and Potomac Railroad Company. (8 I. C. C. Rep., 443.)

1064. The action of the defendants in withdrawing the 180-trip quarterly ticket between Baltimore and Washington was within the limits of their discretion, and did not constitute a violation of the act to regulate commerce.

1065. Under section 22 of the act, carriers are allowed to issue mileage, excursion, and commutation tickets, but ordinarily they can not be compelled to do so. To the extent necessary for their use, tickets of the description named are exempt from the general rules of the statute. Compliance with those rules may be directed by the Commission, but requiring exceptions thereto is not within its province; and this applies as well to the restoration of such tickets where they have been withdrawn, as to the refusal to furnish them where their introduction has been requested.

1066. The provision in section 22, above referred to, authorizes special rates to commuters, which are less per mile than the charges to other passengers for longer distances. Such a relation of rates must exist at certain points under any system of commutation. The most remote point within a commutation district secures lower rates per mile than the next and more distant point without that district; but the discrimination thus created is not unjust, nor are places outside the commutation territory thereby subjected to undue prejudice.

1067. The Commission has no authority to administer the antitrust law, or even to determine whether it has been violated. If an investigation discloses a violation of that law, the power of the Commission is not enlarged nor its duty changed in respect of the rate involved in the inquiry. No relief could be afforded the complainants in this proceeding upon the theory that the quarterly ticket was withdrawn under an agreement between the car-

riers in violation of the antitrust law, even if the facts were found in support of that contention.

A. J. Gustin *v.* Burlington and Missouri River Railroad in Nebraska; Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert, receivers thereof; Denver and Rio Grande Railroad Company, and Southern Pacific Company. (8 I. C. C. Rep., 481.)

1068. The competition of carriers by water from San Francisco to Gulf of Mexico and Atlantic seaports, and the competition of refineries on the Eastern seaboard with refineries on the Pacific coast, operate, in connection with transportation rates in effect from the East and South to Omaha, to render the circumstances and conditions governing the carriage of sugar by defendants from San Francisco to Omaha, Nebr., substantially dissimilar in comparison with those applying on the transportation for the shorter distance over the same line from San Francisco to Kearney, Nebr.; and to justify a rate of 65 cents per 100 pounds to Kearney, while a rate of 50 cents per 100 pounds is in force to Omaha; but such circumstances and conditions do not justify the present rate of 77 cents per 100 pounds as compared with the rate of 50 cents in force to Omaha.

The Board of Trade of the City of Hampton, Florida, *v.* The Nashville, Chattanooga and St. Louis Railway Company, Western and Atlantic Railroad Company, The Central of Georgia Railway Company, and the Georgia Southern and Florida Railway Company. (8 I. C. C. Rep., 503.)

1069. The rates from St. Louis, Nashville, and Chattanooga to Hampton, complained of in this case, are combinations of the through rates for the haul through Hampton to Palatka and the local rates from Palatka back to Hampton. The result of this system of rate making is to enable the merchants at Palatka to compete with merchants at Hampton at their own doors on equal terms, while the latter are debarred from such competition with the former, and as to territory between the two localities, Palatka merchants are given such an advantage in rates as to enable them to undersell Hampton merchants. This system of rate making results in one of the principal evils which the act to regulate commerce was designed to remedy.

1070. While the location of Palatka on the St. Johns River, and the fact that there is more competition by rail at Palatka than at Hampton, may justify rates to Palatka somewhat lower than to Hampton, the Hampton rates should not be higher than the Palatka rates by the locals from Palatka to Hampton; and in fixing the Hampton rates the carriers are bound to take into account the interest of the community at Hampton as well as its own interest, and they must not put in rates to Hampton which prohibit its citizens from the transaction of business in competition with Palatka. *Held*, that the present Hampton rates are in violation of both the fourth and third sections of the act to regulate commerce, but that Hampton rates may properly be made higher than the Palatka rates by the differentials now existing between the Palatka and Jacksonville rates.

1071. The defendants are given until May 1, 1900, to readjust their rates to Hampton and Palatka in accordance with the conclusion above stated, and if at that date this has not been done, an order will issue in the premises.

Pennsylvania Millers' State Association *v.* The Philadelphia and Reading Railway Company *et al.* (8 I. C. C. Rep., 531.)

1072. It is well settled that a railway company whose road is wholly within the bounds of a single State, "when it voluntarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage or shipment of goods and merchandise, is subjected, so far as such traffic is concerned, to the regulations and provisions of the act to regulate commerce." Interstate Commerce Commission *v.* Detroit, G. H. and M. R. Co., 167 U. S., 642; Cincinnati, N. O. and T. P. R. Co. *v.* Interstate Commerce Commission, 162 U. S., 184; The Daniel Ball, 10 Wall., 565.

1073. There is no violation of section 2 of the commerce law shown in this case in the application of the rule allowing 96 hours for unloading cars at Philadelphia; neither is there any violation of that section in the facts that on all other commodities beside those to which the 96-hour rule is applied, only 48 hours are allowed at Philadelphia, and on coal, coke, pig iron, and iron ore 72 hours are allowed at interior points, while only 48 hours are allowed on other traffic at interior points. Section 2 prohibits unjust discrimination in "the transportation of a like kind of traffic," and does not apply where the traffic is of different kinds or classes not competitive with each other.

1074. The rule of section 4 of the law, forbidding the greater charge for the shorter than the longer haul, has no application to this case. That rule is based on distance and relates to the actual transportation charges and not to demurrage charges, which are in the nature of charges for storage in the cars of the carrier. (Interstate Commerce Commission *v.* Detroit, G. H. and M. R. Co., 167 U. S., 644.) If, however, such demurrage charges when added to transportation rates result in greater aggregate charges in certain cases than in other cases involving longer hauls, this may constitute undue preference as between different localities under section 3.

1075. If the time allowed at Philadelphia, or other terminals, for loading or unloading is reasonable and that allowed at interior points is unreasonably small, then an undue prejudice to interior points in violation of section 3 of the law might result; and if demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of section 1 of the law, which directs "that charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just."

1076. While it is held by the Supreme Court in Interstate Commerce Commission *v.* Cincinnati, N. O. & T. P. R. Co., 167 U. S., 479, that the Commission has no power to prescribe rates, "maximum, minimum, or absolute," the Commission may order the carriers to "desist from the continuance of an unlawful practice." (Interstate Commerce Commission *v.* East Tennessee, V. & G. R. Co., 85 Fed. Rep., 110.) The Commission may therefore after investigation find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful, or, in other words, unreasonably small, and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time.

1077. It is held that forty-eight hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily antecedent to the actual process of unloading, and it is ordered that as to grain, flour, hay, and feed consigned to and deliverable at interior points in the territory of the Philadelpnia Car Service Association, the defendants cease and desist from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. It is further held that forty-eight hours will be a reasonable time for the actual unloading.

1078. By section 1 of the law, storage is named as a "service in connection" with transportation, and the charges therefor are required to be "reasonable and just." The schedule of rates required by section 6 of the law to be printed, posted, and filed with the Commission should state, among other terminal charges, the rules and regulations, if any, of the carrier in relation to storage; and the Commission has so ordered.

Holmes & Co. *v.* Southern Railway Company; Memphis and Charleston Railroad Company and Chas. M. McGhee and Henry Fink, receivers thereof; Kansas City, Memphis and Birmingham Railroad Company; Kansas City, Fort Scott and Memphis Railroad Company; Missouri Pacific Railway Company, and Illinois Central Railroad Company. (8 I. C. C. Rep., 561.)

1079. A complainant is entitled to an order for reparation in an amount equal to that by which the rates exacted and paid exceed reasonable rates, but the burden of showing the unreasonableness and the amount is upon the complainant.

1080. The continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but when a railway company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company which tends to show the unreasonableness of the advance; and the force of this admission becomes great in view of the general decline in the average of railway rates and the lessened cost of service.

1081. The action of a railway company in reducing a rate upon complaint of a shipper is not conclusive evidence that the rate was unreasonable before the reduction, but when the traffic manager of that company, after a careful examination of the facts, makes the reduction, that, too, is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction.

1082. A railway company may from considerations of policy grant a reduction in its rates which this Commission could not order as a matter of right under the act to regulate commerce.

1083. Rates on barrel material from the West to Hawkinsville, Ga., were higher than those to Macon, Ga., from February 10, 1896, to January 22, 1897. At times prior to the date first mentioned, and uniformly since the date last mentioned, the rates to Hawkinsville and Macon have been the same. Rates on other commodities are, as a rule, higher to Hawkinsville than to Macon. The distance is greater to Hawkinsville, which is located on a branch line, and competition is less active there than at Macon. *Held*, that complainant failed to show that the rate on barrel material under the act to regulate commerce ought from February 10, 1896, to January 22, 1897, to have been the same to Hawkinsville as to Macon, and that the complaint should be dismissed.

Holmes & Co. *v.* Southern Railway Company, Cincinnati, New Orleans and Texas Pacific Railway Company, Columbus, Hocking Valley and Toledo Railway Company, and Pennsylvania Railroad Company. (8 I. C. C. Rep., 570.)

1084. Upon the conclusions announced in the preceding case, Holmes & Co. *v.* Southern Railway Company *et al.*, the complaint in this case should be dismissed.

City of Danville and others *v.* Southern Railway Company and others. (8 I. C. C. Rep., 571.)

1085. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed, such application was, after due hearing, denied.

In The Matter of Alleged Unlawful Charges for Transportation of Vegetables From Shipping Points in Florida to New York and other Northeastern Points by The Savannah, Florida and Western Railway Company; The Brunswick and Western Railroad Company; The Charleston and Savannah Railway Company; The Silver Springs, Ocala and Gulf Railway Company; The Sanford and St. Petersburg Railroad Company; The Florida Southern Railway Company; The Florida Central and Peninsular Railroad Company; The Southern Railway Company; The Northeastern Railroad Company of South Carolina; The Norfolk and Carolina Railroad Company; The Wilmington, Columbia and Augusta Railroad Company; The Wilmington and Weldon Railroad Company; The Richmond and Petersburg Railroad Company; The Petersburg Railroad Company; The Richmond, Fredericksburg and Potomac Railroad Company; The New York, Philadelphia and Norfolk Railroad Company; The Pennsylvania Railroad Company; The New York, New Haven and Hartford Railroad Company; The New England Railroad Company; The Ocean Steamship Company of Savannah; The Clyde Steamship Company; The New York and Texas Steamship Company; The Old Dominion Steamship Company; The Merchants' and Miners' Transportation Company, and the Baltimore, Chesapeake and Richmond Steamboat Company. (8 I. C. C. Rep., 585.)

1086. Allegations of unreasonable rates on vegetables from points in Florida to New York and other northeastern destinations were investigated by the Commission in a proceeding instituted upon its own motion, but the evidence presented was too uncertain and inconclusive to enable the Commission to make the necessary comparisons or arrive at any definite conclusion.

1087. Published tariffs specifying rates per standard crate on vegetables shipped from Florida to northern or northeastern points, should state plainly the weight or dimensions of the crate to which the rates apply.

Warren-Ehret Company, *v.* The Central Railroad of New Jersey, and the New York, New Haven and Hartford Railroad Company. (8 I. C. C. Rep., —.)

1088. While a railroad company operating its road as part of a through line in connection with other carriers defendants in a case brought to test the legality of a through charge over such line is a proper party, it is not a necessary party to the proceeding.

1089. Although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge; and when an unlawful rate results from some arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share or division.

1090. The rate on roofing slag, carloads, from Leesport, Pa., to Harlem River Station, is $3.40 per ton, of which the carriers to Communipaw, N. J., on the Hudson River, receive $1.30 per ton, the balance, amounting to $2.10 per ton, going to the N. Y., N. H. & H. R. Co. for its service in carrying the slag by its car floats from Communipaw around New York City to its Harlem River station. Such through rate also applies as a group rate to numerous stations on the N. Y., N. H. & H. R. in what is known as the Hartford group, including Waterbury, Conn. The freight could be transferred by an independent lighterage company from Communipaw to Harlem for 80 cents per ton, and railroads terminating on the New Jersey shore generally allow 60 cents per ton for lighterage to points within New York lighterage limits. *Held*, Upon all the facts, that the through rate of $3.40 to Harlem River is grossly unreasonable, and is rendered so by the excessive share of $2.10 to the N. Y., N. H. & H. R. Co. for transfer by its car floats from Communipaw to Harlem River; that reasonable compensation for such delivery by car float should not exceed $1 per ton, and this added to the share of $1.30 received by the connecting carriers constitutes a reasonable and lawful rate of $2.30 per ton, which the defendant carriers are recommended to put in force; that the complainant is entitled to reparation on a shipment of two carloads of slag to the extent of the difference between the rate charged and the rate found reasonable. The propriety of the $3.40 rate per ton applied as a group rate to all stations in the Hartford group is not passed upon in this proceeding.

George J. Kindel and the Denver Chamber of Commerce *v.* Atchison, Topeka and Santa Fe Railway Company and others. (8 I. C. C. Rep., 608.)

1091. A railroad is not justified in discriminating against a community or an individual by the fact that the person or locality so discriminated against is not directly injured. The law declares that under like circumstances and conditions every individual, every commodity, and every community shall be treated alike, and the fact that they are not is a violation of law. The denial of a legal right is itself an injury.

1092. This proceeding involves the legality of greater freight charges to Denver than to San Francisco from Missouri River and points east; greater freight charges from Denver than from Missouri River and points east to San Francisco; greater freight charges to Denver than to Missouri River and points east from San Francisco; greater freight charges from Denver than from San Francisco to Missouri River and points east. Pending the controversy, numerous concessions in rates in favor of Denver were made by the carriers, among which are changes making west-bound rates apparently no higher to or from Denver than those in effect from Missouri River or points east. The circumstances and conditions affecting the transportation, including the effect of water competition in both directions between the Pacific coast and the Atlantic seaboard, the competition of markets, the physical condition of the lines, and the condition of the carriers themselves, considered, and upon the whole situation. *Held*, That the rates complained of are in violation of the fourth and third sections of the act to regulate commerce, and that, as matter of general application, rates at Denver to or from the East, or to or from the Pacific coast, ought not to be higher than those between San Francisco or other Pacific coast terminals and the Missouri River or points east. While there are perhaps instances in both directions where higher intermediate rates may properly be maintained, no exception has been claimed as to any article west bound. In case of east-bound traffic, defendants' contention that the rate on sugar might be higher to Denver than to Missouri River is sustained, it being found that the circumstances and conditions governing the traffic are different when it is carried to Missouri River points than when it stops at Denver.

1083. The decision herein is confined to the general situation, but the defendants are recommended to correct the injustice apparently resulting from rates on certain articles mentioned in the testimony, and the Denver Chamber of Commerce or any person interested is given leave to bring any specific complaint to the attention of the Commission.

James C. McGrew *v.* Missouri Pacific Railway Company. (8 I. C. C. Rep., 630.)

1094. Complainant's contention that defendant's rate on coal from Myrick, Mo., to Kansas City, Atchison, and points north and west are inherently unreasonable is not sustained, the record containing no evidence upon which the question can be intelligently considered.

1095. Myrick and Rich Hill, Mo., are located on different branches of defendant's system, and Myrick is 43 miles nearer than Rich Hill to all points on defendant's lines in Kansas and Nebraska, terminating at Hoxie, Lenora,

and Smith Center, Kans., and Prosser, Crete, Lincoln, and Omaha, Nebr. Defendant's rates on coal from Myrick, Mo., are 15 cents per ton lower than from Rich Hill, Mo., to Kansas City and Atchison, but beyond Atchison to numerous points on said Kansas and Nebraska lines this differential disappears, and in many cases lower rates are in force from Rich Hill than from Myrick. *Held,* That complainant's demand for a differential north and west of Atchison, as well as to Atchison and points south thereof, should be sustained to the extent of a differential of 10 cents in favor of Myrick as far north as Nebraska City Junction and as far west as Greenleaf, Kans., and of 5 cents beyond such points to the termini of defendant's said lines.

1096. Defendant contended that as coal from its mines at Rich Hill has less value for domestic purposes than Myrick coal, it might equalize such difference in value by making a lower rate on Rich Hill coal. Complainant's cost of mining at Myrick is nearly 50 cents a ton more than it costs defendant to mine its coal at Rich Hill. *Held,* That there is in fact no such difference in value as to justify defendant's rate adjustment in favor of Rich Hill; that if difference in quality is to be equalized in favor of the defendant, the question arises why should not difference in cost of mining be equalized in favor of the complainant; that if any such process of equalization is permissible defendant may absolutely dictate the comparative value of every mine and industry upon its road; and that such rates should be examined with closest scrutiny when resorted to by the carrier in its own favor.

1097. Defendant classifies its Rich Hill coal as soft or lump coal and "mine run, nut, mill, and slack," the former being used for domestic consumption and the latter for steam purposes. The two kinds of coal are entirely distinct in their use, and the latter does not compete with the product of complainant's mine, which is all lump coal. *Held,* That defendant may properly make this distinction in classification and apply a lower rate to steam coal, and that complainant is not damaged by defendant's failure to publish a rate upon mine run, nut, mill, and slack from Myrick, since the Myrick mine produces nothing which could be shipped under that name.

1098. The defendant railway company, owning most of the mines upon its system, is engaged both in mining and transporting coal to market, and it is a matter of entire indifference to it whether a profit accrues from the mining or from the transportation; it may so adjust its rates that the mining of its coal will be conducted at a loss, the profit being derived from the carriage, and in that event every coal operator upon its line paying such rates must do business at a loss. *Held,* That the only remedy available in such case to the independent operator is to secure to him a reasonable rate.

1099. It is true that the remedy by way of damages for unlawful rates is utterly inadequate and inconsistent, but it is apparently the remedy prescribed by the act to regulate commerce, and the only remedy which the shipper has against the exaction of an unreasonable interstate rate.

Spencer E. Carr *v.* The Northern Pacific Railway Company. (9 I. C. C. Rep., 1).

Complainant, a commercial salesman, travels with his assistant over the defendant transcontinental line in a private car stocked with samples of men's clothing and furnishings. For the first trip the car was transported from point to point as complainant required for fifteen round-trip fares between St. Paul, Minn., and Portland, Oreg.; but defendant's charge for subsequent trips was fifteen local fares from point to point where stoppages were made by complainant for business purposes. Complainant alleged this higher charge to be unreasonable and also wrongfully discriminating as compared with the lower rate of fifteen round-trip fares usually granted to pleasure, theatrical, and other parties in private cars. While there is no substantial difference in cost to the carrier in transporting complainant's car and cars used by theatrical or other parties, the dissimilarity in the nature and value of the two services is marked and the benefit accruing to complainant exceptional. He uses in all cases the property of defendant, its side tracks and station yards, for transacting his business, and his occupation is such that he derives advantages peculiar to himself which are not available to other owners of private cars. Defendant claimed not to be a common carrier of private cars, and that it may transport some cars and refuse to transport others as and when it sees fit. *Held:*

1100. The regulating statute is opposed to every species of favoritism, and seeks to secure like treatment for all persons in like relations to the carrier. Defendant may lawfully decline to haul private cars at all, or it may haul private cars of one class and refuse to haul others of a wholly different class; but if it transports private cars of any class, it must in like manner and upon like terms transport all private cars occupied for the same or similar purposes.

1101. Where the differences in cost or character of service are substantial, either in the work performed by the carrier or in its utility and value to the person served, a fair relation of rates meets the carrier's obligation.

1102. In comparison with the private-car service, more or less frequently performed by defendant for pleasure seekers and theatrical companies, the service demanded by complainant is dissimilar and unusual to such a degree that to require from him greater compensation, or to refuse his car altogether, would not subject him to unlawful discrimination or disadvantage.

1103. In determining whether it will in any case transport complainant's car or others of that class, defendant may properly take into account the effect of the practice upon the interests and localities it serves; but the right of complainant to have his car hauled does not depend upon the wishes of his business rivals, nor can the compensation to be paid by him be justly conditioned upon the routing of his freight traffic.

1104. Rates may be fair and reasonable for the service rendered, and, from the carrier's standpoint, justly related to other charges; and yet if a low rate is granted upon conditions with which only a few can comply (*e. g.*, a charge below the ordinary carload rate for shipments of a hundred or a thousand carloads), that rate is presumably unfair and wrongfully prejudicial to all other shippers of like traffic, because they are practically unable to meet the terms upon which it is offered. This principle may properly be considered with reference to the class of cars employed by complainant, which only a limited number of dealers can afford to use for reaching their customers and exhibiting their wares. In the competitive struggle to supply consuming markets, neither contestant should be favored through the facilities furnished or the rates enforced by public carriers. This is at once the aim of the law and the requirement of relative justice.

1105. The rates charged to complainant for moving his car, while not held to be reasonable, are not shown to be unreasonable.

1106. It is the legal duty of defendant to publish and file its rates and regulations for the movement of private cars, certain kinds of which are more or less frequently handled over its line.

Hilton Lumber Company *v.* Wilmington and Weldon Railroad Company *et al.* (9 I. C. C. Rep., 17.)

1107. The rule that while the aggregate rate should increase the rate per ton per mile should decrease as distance increases is not one required by the statute and is subject to qualifications and exceptions.

1108. The local rates on lumber from Wilmington to Norfolk or Portsmouth, Va., added to the rates in force from Portsmouth or Norfolk to Philadelphia, Jersey City, and Boston, produce lower aggregate charges than the through rates in effect on lumber carried by the connecting defendant carriers from Wilmington direct to Philadelphia, Jersey City, and Boston via Portsmouth and Pinners Point, adjacent to Norfolk. This results from the fact that the arbitrary or proportion of the through rate from Wilmington exacted by the carriers north of Portsmouth or Norfolk is greater than their rates on shipments from Norfolk or Portsmouth. The rates to Philadelphia, Jersey City, and Boston from Norfolk or Portsmouth are made to meet water competition, and such competition also exists for traffic from Wilmington to Northern seaport cities. Lumber manufacturers in Wilmington and Norfolk and vicinity compete actively for the sale and shipment of lumber to Northern markets. The circumstances and conditions applying on the transportation of lumber from Portsmouth, Norfolk, and vicinity to Philadelphia, Jersey City, and Boston on traffic originating at those points and at Wilmington are substantially similar, or if any difference exists it is in favor of the through Wilmington business. *Held*, That the through rates from Wilmington to Philadelphia, Jersey City, and Boston, to the extent that they exceed the sum of rates from Wilmington to Norfolk or Portsmouth and from the latter points to the Northern cities mentioned, are unjust and wrongfully prejudicial to Wilmington shippers, in violation of sections 3, 1, and 2 of the act to regulate commerce.

1109. Divisions of joint rates are usually less than the corresponding locals, and almost without exception not greater, and while a case may arise in which such a division could with propriety be made greater than the local or straight rate, no such case is presented here where the total through rate on competitive traffic exceeds the sum of charges to and from an intermediate point.

1110. Case retained for further investigation in regard to certain apparent discriminations resulting from a lower proportion or arbitrary charged by carriers south of Norfolk on lumber from Wilmington to New York City than on lumber from Wilmington to Jersey City, located on the Hudson River

opposite New York, and from lower rates charged by one of such carriers from interior points near Wilmington to Portsmouth or Pinners Point on shipments to Northern seaport cities than the proportion or arbitrary charged by it on through business from Wilmington to the same destinations.

A. W. Holdzkom *v.* Michigan Central Railway Company and Others. (9 I. C. C. Rep., 42.)

1111. In cases involving lower charges for longer than for shorter distances over the same line in the same direction, the shorter being included within the longer distance, all forms of competition must be taken into account, but the mere fact of competition at the more distant point does not of necessity justify the lower longer-distance charge. In this case the construction of the third section, or undue-preference clause of the statute, is also involved, and under that section at least the question is not merely does some form of competition exist at the more favored point, which is not found at the other, but rather do all the circumstances and conditions, giving due regard to the interests of all parties, excuse the preference.

1112. Two railroad lines serve both Los Angeles and San Bernardino, and if Los Angeles has means at its command by which it may force a rate from such lines or either of them which San Bernardino does not possess, that is an element which must be considered in determining the legality of a lower rate from the East to Los Angeles, the longer-distance point; but the fact that it is a larger town with more business, and therefore that competition between the lines is fiercer there than at San Bernardino, does not justify the disparity in charges in favor of Los Angeles. The two roads can not agree to compete here and not compete there. In their capacity of public servants ministering to the wants of these communities they must not favor one above the other simply because it is stronger to begin with. One of the underlying principles of the act to regulate commerce is equality between great and small.

1113. Traffic brought from the East by the U. P., N. P., G. N., and C. P. railways to various Northern Pacific seaports can be carried from thence to Los Angeles without passing over the routes of either the S. P. or S. F. systems, but it must pass over one of such roads to reach San Bernardino. Merchandise by these rail and water routes to Los Angeles must be transported by rail across the continent, transshipped, and carried 1,200 miles by ocean, and again transshipped for another 20 miles' rail haul before it reaches Los Angeles in competition with the S. P. or S. F. railway. *Held*, That while traffic may be, and at times actually is, carried by such circuitous rail and water routes, it is questionable whether it ought to be, and the Commission does not hold in this case that such competition in itself constitutes justification for a higher rate at an intermediate point like San Bernardino than is enforced on traffic from the East to Los Angeles.

1114. The conditions affecting traffic, including carriages and buggies, from Eastern points are rendered substantially different at Los Angeles than at San Bernardino, a shorter-distance point on the same line, by the competition of carriers wholly by water from the Atlantic seaboard to Port Los Angeles, a point on the Pacific coast near Los Angeles, and the effect of such competition by water direct to San Francisco is, upon all the circumstances, properly recognized at Los Angeles by giving that city all-rail rates from the East as low as those in effect to San Francisco.

1115. No opinion is expressed as to whether rates from the East to San Bernardino, made by combining the rates to Los Angeles with the locals back to San Bernardino, can lawfully be constructed in that manner, the evidence being insufficient to enable the Commission to determine the question. *Danville* v. *So. Ry. Co.* (8 I C. C. Rep., 409, 571) and *Hampton* v. *N. C. & St. L. Ry. Co.* (8 I. C. C. Rep., 503) cited and distinguished.

Palmer's Dock Hay and Produce Board of Trade *v.* The Pennsylvania Railroad Company (9 I. C. C. Rep., 61).

1116. Defendant, a common carrier of interstate commerce, is not in every case under legal compulsion to furnish the same terminal facilities for all descriptions of traffic; it is sufficient if reasonable provision is made in this regard, and what is reasonable in a given instance depends largely upon the conditions and surroundings of the particular locality.

1117. Transportation between defendant's terminal in Brooklyn and its rail terminus in Jersey City is effected by water carriage across New York harbor. The action of the defendant in discontinuing "track delivery" for hay in carloads at its station in Brooklyn, though it continued to make such delivery for other carload traffic, was taken to relieve a state of chronic congestion at that station resulting largely from consignments of hay thereto. It still continues delivering carload hay alongside wharves

in Brooklyn as it does at other points within the lighterage district of New York. *Held*, That the resulting discrimination against hay in carloads was not "unjust" within the meaning of the act to regulate commerce, and as no violation of the regulating statute is shown the complaint should be dismissed.

The Dallas Freight Bureau et al. *v.* The Austin and Northwestern Railroad Company et al. (9 I. C. C. Rep., 68.)

1118. Competition, whether it be water competition, railroad competition, or market competition, provided it produces a substantial and material effect upon traffic and rate making, may create dissimilarity of circumstances and conditions, and such competition must be taken into consideration in cases arising upon complaint under the fourth section. Decisions of United States Supreme Court in *Interstate Commerce Commission* v. *Alabama Midland R. Co.*, 168 U. S., 144, and subsequent cases cited and applied.

1119. Complainants alleged that higher rates in force from Northern and Eastern markets to Dallas and Fort Worth than those in effect over lines through those Texas cities to Galveston and Houston violate section 4 of the statute, but the case was tried upon an erroneous theory that market and railroad competition could not work dissimilarity in the circumstances and conditions within the meaning of the statute. The testimony, which bears solely upon complainants' contention that the statute forbids higher rates on any and all freights for the shorter distance to Dallas or Fort Worth than for the longer distance to Galveston or Houston, was not sufficient to enable the Commission to determine whether the circumstances and conditions governing the transportation in question are or are not substantially similar in respect of all kinds and classes of freight traffic. *Held*, That the complaint must be dismissed, but with leave to complainants to challenge the existing differences in rates as to particular articles or any class of freights by supplemental complaint or in a new proceeding.

Nathan Myer *v.* Cleveland, Cincinnati, Chicago and St. Louis Railway Company et al. (9 I. C. C. Rep., 78.)

1120. Manifestly, in determining what freight rate shall be borne by different commodities an attempt should be made to maintain a fair relation between those commodities, and a classification which utterly ignores all considerations of this kind, or which utterly fails to give due weight to such considerations, is unjust and unreasonable.

1121. Hatters' furs and fur scraps and cuttings are offered for transportation in packages not bulky, but of convenient size; their value is not great, they are not liable to be lost or damaged in transit, and the first class of the "official classification" enforced by defendants contains hardly any article so desirable for traffic as they are, yet these commodities are classified double first class by the defendant carriers. For manufacturing purposes these raw materials are competitive with hats, the finished product. Complainant, located at Wabash, Ind.; is the only manufacturer of hats west of Atlantic seaboard territory, most of his competitors being located in the vicinity of New York, from whence supplies of hatters' furs and fur scraps and cuttings are almost entirely drawn. The difference in freight rates operates to damage complainant in his competition in Western territory with the Eastern manufacturers to the extent of about $1,000 per year. *Held*, That hatters' furs and fur scraps and cuttings as compared with articles taking first-class rates in defendants' classification, including hats, the finished product for which these commodities constitute raw material, are unlawfully made double first class, and can not lawfully be classed higher than first class in such classification.

1122. An order of the Commission requiring a carrier to cease and desist from enforcing a classification of specified articles higher than the classification which upon the facts it has found to be lawful is not prescribing a rate for the future. Classification determines the relation of rates as between commodities, not the rate itself, and when a commodity is transferred from a higher to a lower class the revenues of the carrier are not necessarily diminished, since it may advance the rates applicable to those classes.

National Wholesale Lumber Dealers' Association *v.* The Norfolk and Western Railway Company, The Cumberland Valley Railroad Company, The Pennsylvania Railroad Company, and The Baltimore and Ohio Railroad Company. (9 I. C. C. Rep., 87.)

1123. Lumber in carloads is shipped from points in West Virginia and southwestern Virginia to New York City over the N. & W. Ry. to Hagerstown, and

thence via the P. R. R. to destination, and over the N. & W. to Shenandoah Junction, and thence via the B. & O. R. R., under rates made by adding to those of the N. & W. to Hagerstown and Shenandoah Junction a specific or arbitrary of 13 cents per 100 pounds charged by the Penn. and B & O., respectively, therefrom. This specific rate was advanced from 12 to 13 cents in 1893, and the N. & W. charges were generally increased in 1899 and 1900 about 1½ cents per 100 pounds. Much lower rates on competing lumber have been and are maintained from neighboring points in the same shipping section to New York by the B. & O. and by the C. & O. Ry. connecting with the B. & O. at Staunton and the P. R. R. at Washington. The N. & W. line is considerably longer than the C. & O. line, but present rates by the N. & W. yield higher rates per ton per mile than those of the C. & O. line. The rates from N. & W. points to Philadelphia, Pa., are 6 cents lower than those for the 90 miles greater distance to New York, while on the C. & O. the difference in favor of Philadelphia against New York is only 2 cents. *Held,* upon all the facts and circumstances, that the through rates complained of are unreasonable and unlawful, and that there should be an aggregate reduction in the through rates of 2½ cents per 100 pounds.

The Wilmington Tariff Association of Wilmington, N. C., *v.* The Cincinnati, Portsmouth and Virginia Railroad Company; The Pittsburg, Cincinnati, Chicago and St. Louis Railway Company; The Cincinnati, Hamilton and Dayton Railway Company; The Chicago, Indianapolis and Louisville Railway Company; The Louisville, Evansville and St. Louis Consolidated Railroad Company, and George T. Jarvis, receiver thereof; The Southern Railway Company; The Georgia Railroad Company; The Nashville, Chattanooga and St. Louis Railway Company; The Western and Atlantic Railroad Company; The Chesapeake and Ohio Railway Company; The Norfolk and Western Railway Company; The Cape Fear and Yadkin Valley Railway Company, and John Gill, receiver thereof; The Seaboard and Roanoke Railway Company, The Raleigh and Gaston Railroad Company, The Raleigh and Augusta Air Line, The Carolina Central Railroad Company, The Georgia, Carolina and Northern Railway Company, comprising what is called and known as the Seaboard Air Line System; The Richmond and Petersburg Railroad Company, The Petersburg Railroad Company, The Wilmington and Weldon Railroad Company, The Manchester and Augusta Railroad Company, The Wilmington, Columbia and Auguata Railroad Company, comprising what is called and known as The Atlantic Coast Line System; and The Louisville and Nashville Railroad Company. (9 I. C. C. Rep., 118.)

1124. Preferences existing under relative rates to competing localities must be shown to result from wrongful action of the carrier before it can be required under the act to regulate commerce to readjust the rates in question.

1125. The present adjustment of rates on freight traffic from Chicago, St. Louis, and other related points of shipment to Wilmington, N. C., operates largely to deprive that city in its competition for trade in common territory with Norfolk and Richmond and other Virginia cities of the benefits of those primary markets, and to limit Wilmington to such intermediate points of supply as Cincinnati and Louisville, from which points the rate relations appear to be fair and reasonable, and this subjects Wilmington to disadvantages which are in substantial degree undue and unreasonable, and for which the defendant carriers are to that extent responsible.

1126. Rates from Cincinnati and Louisville to Norfolk are much lower than those from St. Louis and Chicago to Norfolk, and the competitive conditions governing the rates from Cincinnati and Louisville appear to be of the same general character as those which apply to rates from Chicago or St. Louis. The same is true of rates to Wilmington from Cincinnati, Louisville, Chicago, and St. Louis. No substantial difference appears to exist in the really forceful conditions governing rates from these points of supply, except that of distance, which favors Cincinnati and Louisville. Carriers north of Cincinnati, Louisville, and other Ohio River points obtain in most instances shares of the rates to Wilmington which equal their local charges, while they accept much less than their local rates on traffic destined to Norfolk and other Virginia cities, and the rates charged by carriers south of Norfolk, Richmond, or other Virginia gateways on Wilmington business are upon a high basis. *Held,* That what constitutes just rate relations from Cincinnati and Louisville to Norfolk and Wilmington is a fair basis for relative rates from St. Louis and Chicago, and that basis should be adopted, with the modification in favor of the carriers that the readjustment may be made on the basis of East St. Louis rates, and the established practice of charging practically the same rates from St. Louis and Chicago to Wilmington continued. *Held, further,* That substantial

compliance with such rule of adjustment would result by making the rates from Chicago, St. Louis, and East St. Louis to Wilmington 135 per cent of the rates in force from East St. Louis to Norfolk.

The Mayor and Council of Tifton, Ga., *v.* The Louisville & Nashville Railroad Company; The Nashville, Chattanooga & St. Louis Railway Company; The Western & Atlantic Railroad Company; The Central of Georgia Railway Company; The Georgia & Alabama Railway Company; The Georgia Southern & Florida Railway Company; The Tifton & Northeastern Railroad Company; The Savannah, Florida & Western Railway Company, and The Brunswick & Western Railroad Company. (9 I. C. C. Rep., 160.)

1127. Neither the absence nor presence of competition by carriers alone, nor the extent of its operation measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all.

1128. It is the duty of the Commission to consider all circumstances and conditions that reasonably apply to the situation, the legitimate interests of the carrying companies as well as those of traders and shippers and the welfare of the communities at localities where the goods are delivered as well as that communities in the places of shipment (*Texas & P. R. Co.* v. *Interstate Commerce Commission*, 162 U. S., 197), and to give effect to this rule a much broader view must be taken than that of the competition of carriers alone.

1129. Freight passes from New York and other Eastern cities over water and rail lines via Savannah to Tifton, Ga., and through Tifton to Albany, Ga. Freight also passes by all rail routes from Cincinnati, Louisville, Evansville and Nashville to Tifton and through Tifton to Valdosta, Ga. The circumstances and conditions at Tifton are substantially similar to those at Albany on traffic from the East, and the circumstances and conditions at Tifton are substantially similar to those at Valdosta on traffic from the North and West. *Held*, That freight rates from New York and other Eastern cities over such water and rail lines to Tifton which are higher than those to Albany, the longer distance point, are in violation of the act to regulate commerce; that freight rates from Cincinnati, Louisville, Evansville, and Nashville which are higher to Tifton than those to Valdosta, the longer distance point, are in violation of the act to regulate commerce; that freight rates to Tifton which are less than those to Albany or Valdosta from the points named are not authorized to be increased by this decision; that the present rates enforced for the transportation of sugar from New Orleans to Tifton are unjust and unduly prejudicial to Tifton, and such rates to be lawful should not exceed the rates on the same commodity from New Orleans to Valdosta.

The Consolidated Forwarding Company *v.* The Southern Pacific Company; The Atchison, Topeka & Santa Fe Railway Company; The Santa Fe Pacific Railway Company, and The Southern California Railway Company. The Southern California Fruit Exchange *v.* The Southern Pacific Company; The Atchison, Topeka & Santa Fe Railway Company; The Santa Fe Pacific Railway Company, and The Southern California Railway Company. The Continental Fruit Express Company and Armour & Company, interveners. (9 I. C. C. Rep., 182.)

1130. Joint through routes and rates are ordinarily the subject of agreement between the participating carriers, but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use.

1131. Under section 6 of the act two kinds or classes of routes are recognized and provided for, namely, the line of a single carrier, and a continuous line or route operated by more than one carrier where the participating carriers establish joint tariffs of rates or fares or charges for such continuous line or route; and in respect of both classes of lines or routes the provision is uniform that established rates shall not be increased except after ten days' notice nor reduced except after three days' notice.

1132. In the matter of rates for these classes of lines or routes the provisions of the law differ in no respect except one, and that is merely that the Commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous lines or routes, while as to the other class such requirement is specified in the law itself. Such exception does not go to the form, substance, maintenance, or application of the rates in any degree whatsoever; and the Commission has, by order duly made March 23, 1889, prescribed that carriers by such continuous lines or routes shall publish their joint rates in the same manner as separate or individual roads are required by law to do.

1133. Under the practice of defendants as initial carriers in joint continuous routes of reserving to themselves exclusive control of the routing and denying to shippers any choice or control in a selection as between different established routes, a route or tariff may be available to one shipper but not to another, and open one minute to a shipper but closed the next; this to be determined by the carriers' agents according as they may desire to distribute the shipper's business among one another from time to time or for any reason whatsoever. This practice of defendants, whereby shippers are denied the use of their transportation facilities by established routes, is in violation of the statute, and, in its application by the defendants to the traffic in question, subjects the owners and shippers thereof to undue, unjust, and unreasonable prejudice and disadvantage, and gives to the carriers undue and unreasonable preference and advantage.

1134. Carriers are left by the law to procure equipment for their business by lease as well as otherwise, and they are not prohibited from leasing cars belonging to a shipper, nor are they compelled to contract in this respect with all shippers because they do with one.

1135. The questions whether defendants pool their citrus fruit traffic or divide the earnings therefrom, whether the blanket rate of $1.25 per 100 pounds upon oranges and other citrus fruits from southern California to points on and east of the Missouri River, and the minimum carload weight of 26,000 pounds, are unjust or unreasonable, and whether the statute applies to the charges for refrigeration, and if so, whether such charges are unjust or unreasonable, are retained by the Commission for further hearing and investigation.

S. J. Hawkins *v.* Lake Shore & Michigan Southern Railway Company. (9 I. C. C. Rep., 207.)

1136. Defendant discriminated against complainant in favor of other shippers in furnishing cars at Collins, O., ordered during the months of January and February, 1901, and in not furnishing cars for his shipments from Kipton, O., which were ordered in August and September, 1900, until the following December and January, while cars ordered by other shippers at Norwalk were provided with comparative promptness. *Held*, That this was unlawful discrimination against complainant and his traffic and against Kipton as a locality in favor of Norwalk; that complainant should have reparation for damages thereby sustained in the amount of $200.

S. J. Hawkins *v.* Wheeling & Lake Erie Railroad Company. (9 I. C. C. Rep., 212.)

1137. During the period between September 3, 1900, and March 6, 1901, the defendant distributed cars for the movement of traffic in such manner as to discriminate in marked degree against complainant, who desired to ship freight from Hartland, Clarksfield, and Brighton, O., noncompetitive stations, in favor of shippers at Norwalk, O., and other competitive stations. *Held*, That this was unlawful discrimination against complainant, his traffic, and such noncompetitive stations in favor of the competitive stations, shippers therefrom, and traffic there originating; that complainant is entitled to reparation for damages thereby sustained in the amount of $100.

The Red Cloud Mining Company *v.* The Southern Pacific Company. (9 I. C. C. Rep., 216.)

1138. A tariff fixing a rate on machinery from Erie, Pa., to Salton, Cal., having been legally established, it was the duty of the defendant to apply the rate so published and in effect upon a shipment made by complainant between those points; and if, as claimed by complainant, a contract was made with defendant for a lower charge upon that shipment, such contract was not binding, and its violation furnishes no ground for redress under the act to regulate commerce.

Charles H. Johnson *v.* The Chicago, St. Paul, Minneapolis & Omaha Railway Company; The Sioux City & Pacific Railroad Company; The Chicago, Milwaukee & St. Paul Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Burlington & Quincy Railroad Company; The Chicago & Northwestern Railway Company; The Illinois Central Railroad Company; The Kansas City, St. Joseph & Council Bluffs Railroad Company; The Omaha & St. Louis Railroad Company; The Wabash Railroad Company; The Fremont, Elkhorn & Missouri Valley Railway Company; The Union Pacific Railroad Company; The St. Joseph & Grand Island Railway Company; and The Missouri Pacific Railway Company. Hibbard, Spencer, Bartlett & Co., interveners. (9 I. C. C. Rep., 221.)

1139. The failure of the C., St. P., M. & O. Railway Company to publish through freight rates from Chicago, Ill., and other points to Norfolk, Neb., while

such through rates are established and published by that company in connection with other carriers to other points on its line in Nebraska amounts to unlawful discrimination against Norfolk.

1140 Posting a notice in a station or depot that the tariff sheets of the railroad company may be found in some other place is not compliance with the provision in the sixth section of the act requiring the posting of rate schedules or tariffs in every such depot or station.

1141. The freight rates in effect from Chicago, Ill., to Norfolk, Neb., and from Duluth, Minn., to Norfolk are unjust and unreasonable; and upon the facts and circumstances shown in this case the rates from Chicago to Norfolk should not exceed those in force from Chicago to Columbus, Neb., and the rates from Duluth to Norfolk should not exceed the rate in force from Duluth to Emerson, Neb., added to the present local rate in effect from Emerson to Norfolk. The complainant's claim for reparation denied.

Shippers' Union of Phoenix *v.* The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; The Maricopa & Phoenix & Salt River Valley Railroad Company; The Santa Fe, Prescott & Phoenix Railway Company; The Santa Fe Pacific Railroad Company; The Southern California Railway Company; and The San Francisco & San Joaquin Valley Railway Company. (9. I. C. C. Rep., 250.)

The Santa Fé and Southern Pacific Systems reach Los Angeles, Cal., a point to which rates from the East are affected by water competition. Phoenix, Ariz., is not upon either of these through lines, but is connected therewith by two lateral lines, one on the north connecting with the Santa Fé at Ash Fork and one on the south connecting with the Southern Pacific at Maricopa. On complaint that freight rates between New York, Chicago, St. Louis, and other Eastern points and Phoenix are unjust and unreasonable in themselves and relatively as compared with rates on like traffic between New York and such other Eastern points and Los Angeles: *Held*—

1142. That when water competition permits the establishment of classifications and rates below the rates to noncompetitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter-distance points not affected by such competition, and there is no evidence in this case upon the reasonableness of the rates to and from Phoenix except comparison with Pacific coast rates.

1143. That the evidence in this case is insufficient to constitute the basis of a decision requiring defendant carriers to modify their long-standing system of rate making, which also applies over other transcontinental lines throughout a great belt of territory and affects numerous localities and interests which have not been heard in this proceeding, and this being so, the relief sought by complainant is for the present denied, but the case is retained for further consideration pending the investigation and disposition of other cases involving the same general question.

The National Hay Association *v.* The Lake Shore & Michigan Southern Railway Company; The Michigan Central Railroad Company; The New York Central & Hudson River Railroad Company; The New York, Chicago & St. Louis Railroad Company; The New York, Ontario & Western Railway Company; The Delaware, Lackawanna & Western Railroad Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Erie Railroad Company; The Lehigh Valley Railroad Company; The Baltimore & Ohio Southwestern Railroad Company; The Baltimore & Ohio Railroad Company; The Central Railroad Company of New Jersey; The Grand Trunk Railway Company of Canada; The Pennsylvania Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; The Pennsylvania Railroad Company; The Delaware & Hudson Company; The Philadelphia & Reading Railway Company; The Pere Marquette Railroad Company; The Grand Rapids & Indiana Railway Company; The Cincinnati, Hamilton & Dayton Railway Company; The Ann Arbor Railroad Company; The Toledo, St. Louis & Western Railroad Company; The Wabash Railroad Company; The Canadian Pacific Railway Company; The Canada Atlantic Railway Company; The New York, New Haven & Hartford Railroad Company; The Central Vermont Railway Company; The Boston & Maine Railroad Company; and The Boston & Albany Railroad Company. (9 I. C. C. Rep., 264.)

1144. Carriers are entitled under the act to regulate commerce to determine for themselves what are proper rates in the first instance, but when they, as in this case, make numerous rate advances by concerted action and under circumstances not showing justification for increased revenue, they can not successfully plead the excuse of financial necessity where the legality of such action as applied to any given commodity is challenged; and the controlling question must be as to the reasonableness and justice of the advance in classification and rate upon the facts shown in each case.

1145. The legal duty of common carriers to so classify traffic and fix charges thereon that the burdens of transportation shall be reasonably and justly distributed among the articles they carry arises under the obligation imposed upon them not to charge unreasonable or unjust rates or to inflict any unjust discrimination or undue prejudice in any respect whatsoever; and even in cases where the need of additional revenue is apparent the carrier can not arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation.

1146. The defendant carriers, by keeping hay and straw in the sixth class and charging sixth-class rates thereon for thirteen years or more, with the exception of a short period in 1894, were furnishing evidence that such classification and rates are reasonably high, and while the continuance of such classification and rates is not conclusive evidence of their reasonableness, it is in the nature of an admission against them which tends to show the unreasonableness of the advance of hay and straw to fifth-class rates in January, 1900, and the force of this admission becomes great in view of the largely increased business and profits of the defendants in 1899 and subsequent years.

1147. In the carriage of great staples, which supply enormous business, and which, in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carriers are both necessary and justifiable; and although the defendant carriers may be at some greater expense to handle and transport hay than some other articles in the fifth or sixth class of their freight classification, the character, value, volume and use of that commodity are such as to require relatively low charges for its carriage.

1148. In a freight classification like the official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in character, use, value, volume, bulk, weight, risk, expense of handling, and competition; the best that can be done under such a scheme of classification is to place two or more articles possessing general similarity in the same class, and where an article is not analogous to any other to put that article in the class containing commodities which are most nearly related to it in general character and other essential respects.

1149. On January 1, 1900, defendants and other carriers using the official classification advanced hay and straw in carloads from sixth to fifth-class rates, and have since enforced such advanced charges. It is conceded that hay and straw should take the same rates. Hay, in respect of character, use, value, and volume, corresponds more nearly with articles taking sixth class or lower commodity rates than with those in the fifth class. Apparently all commodities which come to defendants in aggregate volume or tonnage equal to or exceeding that of hay are given commodity rates. Hay, as compared with grain and some other articles, when carried between the same points gives the carriers less revenue per car, but it does not follow therefrom, taking the whole traffic, local as well as through, that hay may not give the carriers an average revenue per car per mile nearly as great or even greater than that derived from grain or such other articles. Though hay may be less desirable than grain as an article of traffic it is much more profitable to the carriers, considering its greater volume and the certainty of large quantities seeking transportation each year, than many, if not all, other commodities actually taking fifth or even sixth-class rates. Hay is a raw agricultural product which is grown, shipped, and consumed in all parts of official classification territory and, coming to the carriers in steady and large volume, is profitable to them at sixth-class rates. The cost to the shipper of transporting hay from the Middle West to Eastern markets constitutes a large part of its value in such markets, and when added to the cost of baling and sale the total approximates or exceeds the price realized by the producer. The increased rates have added to the cost of hay and straw to consumers or diminished the price to producers, or both, and prejudiced in some degree the business of middlemen. The advance in hay rates changed a long-existing rate adjustment as between American and Canadian hay shipped to New England and parts of New York in favor of a producing section in a foreign country from which hay shipments into the United States are required by law to pay a duty as high as $4.00 per ton. *Held*, Upon all the facts and circumstances, that the action of defendants on January 1, 1900, whereby hay and straw were advanced from sixth to fifth class and thereafter charged fifth-class rates for transportation was unreasonable and unjust and

resulted in unlawful discrimination and prejudice against hay and straw localities in official classification territory wherein those commodities are produced, and against producers, shippers, dealers, and consumers of such articles in that section of the country.

The Diamond Mills *v.* Boston and Maine Railroad Company. (9 I. C. C. Rep., 311.)

1150. Shippers are not entitled as matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; on the contrary, milling in transit is a special privilege for which extra compensation is usually exacted by carriers and which is only permitted by them under prescribed terms and conditions.

1151. At common law, and under the act to regulate commerce as interpreted by the courts, joint through routes and through rates are matters of contract between the connecting carriers; and the defendant, as party to a joint tariff which does not give shippers the privilege of milling in transit, acted within its legal right in notifying its immediate connections and the complainant that it would not permit that practice.

1152. Complainant brings grain from western points to Buffalo, N. Y., where it is milled, and ships the product to points on defendant's line in New England. The through tariff rates on grain and grain products from the points of origin to the New England points of destination are the same, but no right of milling in transit is granted in the joint tariff. Under a regulation of the Lake Shore Company, one of the parties to the tariff and on whose line complainant's mill is located, milling in transit is permitted under a penalty of 1½ cents per 100 pounds above the rate on grain, but defendant does not join in granting that privilege to shippers from western points to points on its line in New England, and when grain so milled in transit is received by defendant it imposes an arbitrary charge of 6 cents per 100 pounds. The sum of the rate on separate shipments of grain from the west to Buffalo and the established joint rate of 12 cents per 100 pounds on grain products from Buffalo to points on defendant's line is less than the through grain rate added to the defendant's 6-cent arbitrary. *Held*, (1) That defendant has acted unlawfully in imposing the arbitrary charge of 6 cents per 100 pounds in addition to the through grain rate on complainant's milled products forwarded from Buffalo, and that it was and is bound to apply on such transportation from Buffalo its established joint rate on grain products from that point to New England destinations; (2) That complainant is entitled to reparation in the sum of $358.81, the difference between charges exacted from it on the basis of the 6-cent arbitrary added to the through grain rate and the sum of established rates on grain to and on milled products from Buffalo.

The Business Men's League of St. Louis *v.* The Atchison, Topeka & Santa Fe Railway Company; The Burlington & Missouri River Railroad Company in Nebraska; The Chicago, Rock Island & Pacific Railway Company; The Colorado Midland Railway Company; The Denver & Rio Grande Railroad Company; The Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company; The Missouri Pacific Railway Company; The Northern Pacific Railway Company; The Oregon Railroad & Navigation Company; The Oregon Short Line Railroad Company; The Oregon & California Railroad Company; The Rio Grande Western Railway Company; The St. Louis & San Francisco Railroad Company; The St. Louis, Iron Mountain & Southern Railway Company; The Santa Fe Pacific Railroad Company; The Southern California Railway Company; The Southern Pacific Company (Atlantic System); The Southern Pacific Company (Pacific System); The Texas & Pacific Railway Company, and The Union Pacific Railroad Company. Hibbard, Spencer, Bartlett & Co.; Reid, Murdoch & Co.; Sprague, Warner & Co.; Franklin McVeagh & Co.; Kelly, Maus & Co., and S. D. Kimbark; The Merchants' and Manufacturers' Association of Milwaukee; The Kansas City Transportation Bureau of Kansas City, Mo., The Commercial Club of St. Joseph, Mo.; The Duluth Chamber of Commerce of Duluth, Minn., and The Santa Ana, Cal., Chamber of Commerce, Interveners on behalf of Complainant. The Pacific Coast Jobbers' and Manufacturers' Asssociation, Intervener on behalf of Defendants. (9 I. C. C. Rep., 318.)

1153. With water competion compelling low all-rail freight rates from New York to San Francisco and other Pacific coast terminals, a showing that the distance is less and that graded rates were formerly in force is not sufficient to warrant an order requiring lower rates from St. Louis, Chicago, and other interior points than from New York on traffic carried by rail to Pacific coast destinations.

1154. The differences between carload and less than carload rates from St. Louis, Chicago, and other points in the Middle West to Pacific coast territory, which are the subject of complaint herein, and which average about 50 cents per 100 pounds, are not, taking the rate adjustment as a whole and giving due consideration to the controlling force of water competition between the eastern seaboard and the Pacific coast, difference in the cost of service by rail, the interests of the parties, preservation of reasonable competition between the Middle West and the Pacific coast jobbers, and other material circumstances, shown to be unjust; but while the tariff can not be condemned as a whole upon grounds urged by complainants, many of the details in such tariff are in violation of law.

1155. The commodity tariff applying on traffic from the Middle West to Pacific coast territory names rates upon over 400 commodities in carloads only, leaving the movement of these commodities in less than carloads to be governed by the greatly higher class rate provided for such shipments and producing a differential as between carload and less than carload quantities which, even under the peculiar circumstances of this traffic, is in many cases excessive where there is any general movement in less than carloads or other commercial reason for a corresponding less than carload rate; and the tariff is also to some extent unlawful in that it specifies a number of varied commodity rates, especially for the hardware schedule, and unduly prevents in some instances the shipment of articles of the same class in mixed carloads at carload rates.

1156. In the adjustment of carload and less than carload rates circumstances often render the application of a greater differential proper in one case than in another, but taking the traffic generally from the Middle West to Pacific coast territory, it is held that a differential as between carloads and less than carloads which is at once more than 50 cents per 100 pounds and more than 50 per cent of the carload rate is *prima facie* excessive. It does not follow that every differential may equal this, or that every differential which exceeds this is unlawful, but any differential in excess of this requires special justification.

1157. While on traffic from the Middle West to the Pacific coast many differentials in the rates named for carloads and less than carloads are too great; while varied commodity rates in the hardware schedule and perhaps in some others should be readjusted, and while in some instances greater latitude should be given in the shipment of practically the same articles in mixed carloads, the present record, which pertains almost wholly to the general aspects of the controversy, furnishes no facts from which it can be intelligently determined what ought to be done in specific instances, and further hearing is accordingly ordered.

1158. The question whether on traffic from the Middle West the present rates to intermediate points which are higher than those to Pacific coast terminals are lawful was not litigated at the hearing, and while the Commission will not of its own motion proceed in that branch of the case complainants are granted leave to do so if they desire.

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24, 83, 122, 196, 250, 287, 288, 324, 391, 394, 422, 423, 424, 425, 426, 470, 473, 477, 478, 484, 488, 491, 506, 525, 538, 555, 586, 731, 752, 780, 792, 824, 846, 864, 880, 883, 905, 938, 939, 971, 974, 997, 1014, 1029, 1032, 1100, 1101, 1103, 1123, 1146, 1147, 1148, 1149, 1153 1154.

COST OF PRODUCTION.

(*See* Circumstances and Conditions.)

476, 477, 507, 508, 510, 570, 575, 576, 582, 583, 585, 586, 752, 821, 971, 1121.

COTTON RATES.

89, 280, 281, 282, 283, 284, 285, 286, 323, 343, 344, 433, 434, 435, 436, 437, 438, 439, 440, 441, 491, 719, 727, 752, 844, 845, 971, 972, 991, 992, 1052.

DAMAGES.

(*See* Reparation.)

DEMURRAGE.

617, 1073, 1074, 1075, 1076, 1077, 1078.

DEVELOPMENT COMPANIES.

860, 861, 873.

DIFFERENTIAL RATES.

124, 539, 547, 548, 636, 887, 889, 943, 946, 948, 966, 967, 968, 969, 970, 972, 977, 1001, 1009 1028, 1029, 1056, 1070, 1095, 1123, 1152, 1155, 1156, 1157.

DISTANCE.

(*See* Long and Short Haul Section; Through Rates; Local Rates; Reasonable Rates; Mileage Rates; Preference or Advantage.)

122, 176, 221, 222, 231, 282, 338, 391, 394, 404, 654, 792, 854, 865, 886, 887, 888, 889, 916, 969, 976, 1026, 1074, 1107.

DIVISION OF THROUGH RATES.

124, 159, 181, 185, 194, 195, 196, 213, 216, 262, 305, 306, 308, 323, 324, 374, 391, 416, 565, 604 619, 706, 721, 797, 986, 987, 988, 990, 1006, 1018, 1055, 1056, 1060, 1089, 1090, 1126.

DOCUMENTARY EVIDENCE.

(*See* Books, Papers, and Documents; Practice; Evidence; Interstate Commerce Commission.)

DRAWBARS.

829.

EIGHTH SECTION, CONSTRUCTION OF.

(*See* Reparation.)

ELECTRIC RAILWAYS.

871, 873, 874.

ELEVATOR CHARGES.

409.

EMIGRANTS.

(*See* Passengers.)

458, 459, 460, 461, 740.

ENCOURAGEMENT OF INDUSTRIES.

(*See* Development Companies; Long and Short Haul Section; Preference or Advantage.)

ESTOPPEL.

(*See* Evidence.)

545, 634, 734, 755, 769, 956, 1027.

EVIDENCE.

(*See* Books, Papers, and Documents; Practice; Subpœnas Duces Tecum; Estoppel; Burden of Proof; Preference or Advantage.)

30, 31, 32, 61, 62, 74, 80, 136, 154, 199, 210, 211, 247, 252, 255, 256, 258, 290, 357, 379, 380, 381, 382, 383, 384, 385, 386, 411, 485, 486, 521, 544, 545, 552, 573, 584, 624, 632, 635, 637, 639, 640, 644, 666, 667, 690, 706, 710, 720, 721, 734, 638, 739, 755, 762, 768, 769, 790, 807, 808, 857, 864, 866, 690, 892, 924, 958, 983, 984, 985, 994, 998, 999, 1000, 1002, 1021, 1037, 1039, 1050, 1079, 1080, 1081, 1082, 1083, 1086, 1094, 1115, 1124, 1146.

EXPORT RATES.

(*See* Tariffs; Unjust Discrimination.)

12, 13, 121, 122, 123, 124, 261, 287, 374, 375, 377, 553, 554, 555, 556, 557, 558, 559, 560, 579, 589, 892, 986, 987, 988, 989, 990, 1001, 1002, 1003, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1013, 1014, 1015, 1016, 1030, 1031.

EXPRESS COMPANIES.

(*See* Preference or Advantage.)

96, 97, 98, 99, 100, 589.

FACILITIES OF TRAFFIC.

(*See* Through Routes; Through Rates; Preference or Advantage; Unjust Discrimination.)

27, 29, 103, 137, 138, 139, 149, 202, 203, 204, 205, 206, 224, 225, 226, 227, 250, 350, 351, 352, 430, 431, 442, 451, 497, 498, 499, 500, 501, 571, 579, 581, 582, 589, 599, 602, 621, 622, 623, 637, 668, 676, 689, 710, 712, 775, 780, 781, 782, 783, 784, 785, 802, 814, 825, 829, 856, 890, 897, 898, 911, 912, 915, 924, 950, 971, 1032, 1039, 1072, 1074, 1075, 1076, 1077, 1078, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1116, 1117, 1134, 1136, 1137.

FAST-FREIGHT LINES.

(*See* Facilities of Traffic.)

56, 506, 589, 971.

FERRY EXPENSES.

(*See* Reasonable Rates.)

394.

FIFTH SECTION, CONSTRUCTION OF.

(*See* Pooling of Freight.)

FINDINGS OF FACT BY COMMISSION.

(*See* Evidence.)

79, 136, 153, 286, 372, 486, 487, 539, 552, 569, 675, 807, 833, 845, 859, 925, 1089.

FIRST SECTION, CONSTRUCTION OF.

(*See* Interstate Commerce; Jurisdiction; Reasonable Rates.)

FISH COMMISSION.

10, 11.

FLOUR RATES.

374, 482, 483, 522, 523, 546, 547, 548, 549, 610, 611, 697, 698, 731, 948, 966, 967, 968, 969, 970, 975, 976, 1011, 1013, 1014, 1044.

FOOD PRODUCTS.

476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487.

FOREIGN MERCHANDISE.

(*See* Import Rates.)

FOURTEENTH, FIFTEENTH, AND SIXTEENTH SECTIONS, CONSTRUCTION OF.

(*See* Findings of Fact; Practice; Reparation.)

FOURTH SECTION, CONSTRUCTION OF.

(*See* Long and Short Haul Section; Relief from the Operation of the Fourth Section; Competition; Preference or Advantage.)

FREE CARTAGE OF FREIGHT.

(*See* Long and Short Haul Section; Unjust Discrimination.)

38, 452, 453, 454, 455, 609, 611.

FREE PASSES AND FREE TRANSPORTATION.

(*See* Tickets.)

11, 14, 259, 260, 276, 612, 613, 615, 630, 778, 879.

GRAB IRONS.

829.

GRAIN RATES.

83, 261, 337, 374, 375, 376, 377, 393, 394, 409, 414, 539, 547, 548, 600, 609, 610, 611, 695, 696, 697, 698, 731, 732, 733, 731, 779, 833, 860, 892, 899, 908, 911, 925, 926, 946, 948, 966, 967, 968, 969, 970, 975, 976, 990, 994, 999, 1002, 1003, 1009, 1010, 1026, 1028, 1029, 1030, 1031, 1149, 1152.

GROUP RATES.

(*See* Reasonable Rates.)

160, 185, 190, 193, 249, 251, 253, 301, 302, 303, 305, 338, 339, 341, 452, 453, 454, 455, 546, 567, 750, 865, 866, 882, 883, 912, 927, 972, 974, 1090.

HEARINGS.

(*See* Evidence; Practice.)

76, 161, 207, 208, 238, 240, 353, 366, 410, 535, 537, 545, 807, 809, 850, 885, 961, 1002.

HOGS AND HOG PRODUCTS.

504, 505, 506, 588.

IMMIGRANT CARS.

(*See* Cars.)

269, 271, 272, 459, 460.

IMPORT RATES.

553, 554, 555, 556, 557, 987, 989, 1005, 1007, 1008.

INDIAN SUPPLIES.

4.

INSPECTION OF CARS.

(*See* Cars.)

269, 271, 272, 329, 330, 331.

INSTRUMENTALITIES OF SHIPMENT OR CARRIAGE.

(*See* Facilities of Traffic; Interstate Commerce; Jurisdiction.)

INTERCHANGE OF TRAFFIC.

(*See* Facilities of Traffic; Continuous Carriage of Freights; Through Routes; Through Rates.)

INTERSTATE COMMERCE.

15, 16, 96, 98, 99, 100, 137, 138, 139, 218, 222, 284, 350, 359, 360, 361, 362, 398, 399, 409, 410, 448, 449, 450, 451, 485, 486, 487, 497, 498, 499, 501, 528, 529, 531, 532, 550, 553, 554, 555, 556, 566, 569, 571, 572, 581, 589, 598, 599, 601, 602, 618, 645, 650, 658, 659, 660, 676, 680, 695, 696, 717, 719, 785, 801, 802, 830, 871, 872, 876, 877, 882, 951, 1067.

INTERSTATE COMMERCE COMMISSION.

(*See* Jurisdiction; Rate Making.)

1, 2, 5, 8, 43, 50, 54, 72, 90, 97, 100, 130, 158, 160, 170, 218, 243, 244, 269, 270, 274, 284, 325, 343, 351, 353, 358, 366, 370, 379, 387, 388, 399, 407, 448, 449, 451, 484, 485, 486, 487, 496, 511, 513, 535, 537, 546, 562, 569, 580, 599, 601, 602, 603, 614, 616, 634, 650, 666, 680, 714, 715, 722, 726, 743, 755, 815, 830, 834, 835, 856, 871, 876, 910, 920, 923, 924, 931, 950, 961, 1065, 1067.

JURISDICTION.

(*See* Interstate Commerce Commission.)

1, 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 39, 40, 41, 42, 43, 44, 90, 91, 96, 97, 98, 99, 100, 137, 138, 139, 202, 218, 269, 284, 343, 351, 359, 360, 361, 362, 399, 409, 410, 448, 449, 450, 451, 497, 498, 499, 501, 511, 528, 529, 531, 532, 542, 545, 553, 554, 555, 556, 571, 572, 581, 598, 599, 601, 602, 603, 618, 626, 634, 637, 645, 650, 658, 659, 676, 680, 695, 717, 785, 801, 802, 830, 834, 835, 856, 871, 872, 876, 877, 882, 915, 920, 924, 931, 950, 966, 989, 1005, 1014, 1065, 1067, 1076, 1089.

LEASE.

753, 805, 1134.

LIABILITY.

(*See* Bills of Lading; Contracts.)

LIEN OF CARRIERS.

150, 725.

LIGHTERAGE CHARGES.

636, 1090.

LIKE KIND OF TRAFFIC.

(*See* Long and Short Haul Section; Unjust Discrimination.)

LIVE STOCK.

(*See* Cars; Preference or Advantage; Relative Rates; Unjust Discrimination.)

41, 63, 64, 336, 397, 504, 505, 506, 588, 589, 949, 950, 951, 952, 953, 954, 955, 957, 959.

LOCALITIES.

(*See* Location; Preference or Advantage; Relative Rates; Unjust Discrimination.)

LOCAL RATES.

(*See* Through Rates; Local Rates.)

23, 127, 128, 184, 238, 346, 468, 470, 473, 509, 510, 516, 522, 523, 528, 531, 532, 560, 567, 578, 597, 643, 644, 699, 718, 720, 767, 797, 798, 868, 891, 894, 895, 896, 897, 898, 899, 904, 922, 965, 1003, 1010, 1018, 1031, 1055, 1056, 1108, 1109, 1126, 1141.

LOCATION.

(*See* Preference or Advantage; Long and Short Haul Section.)

82, 468, 473, 482, 483, 504, 505, 508, 522, 524, 538, 539, 546, 547, 585, 586, 621, 622, 623, 636, 643, 647, 653, 664, 666, 673, 675, 676, 679, 685, 692, 697, 698, 699, 700, 707, 723, 744, 749, 815, 821, 852, 886, 887, 888, 905, 915, 929, 930, 931, 993, 1001, 1002, 1023, 1014, 1053, 1054, 1060, 1062, 1068, 1069, 1070, 1103.

LONG AND SHORT HAUL SECTION.

(*See* Competition; Preference or Advantage; Relief from the operation of the Fourth Section.)

1, 17, 18, 19, 20, 21, 22, 23, 24, 49, 50, 54, 55. 56, 57, 58, 66, 67, 85, 86, 87, 88, 89, 157, 158, 173, 174, 175, 188, 190, 191, 192, 193, 231, 232, 233, 234, 235, 239, 240, 241, 245, 253, 257, 268, 293, 301, 302, 303, 304, 305, 306, 324, 332, 335, 338, 342, 355, 364, 374, 377, 400, 401, 402, 403, 404, 405, 416, 417, 419, 435, 452, 453, 454, 455, 468, 469, 471, 479, 480, 481, 482, 483, 494, 495, 496, 516, 517, 522, 523, 525, 526, 558, 577, 584, 595, 596, 597, 598, 621, 622, 623, 643, 644, 645, 646, 647, 648, 649, 651, 652, 653, 660, 661, 662, 663, 664, 665, 666, 667, 676, 677, 678, 679, 690, 692, 693, 694, 699, 700, 701, 722, 737, 747, 748, 767, 768, 769, 770, 771, 773, 774, 775, 776, 779, 786, 787, 792, 794, 796, 810, 816, 817, 820, 822, 825, 827, 841, 842, 844, 845, 847, 848, 851, 852, 853, 869, 870, 878, 883, 884, 901, 902, 903, 904, 905, 913, 914, 921, 922, 923, 926, 933, 936, 937, 938, 940, 942, 943, 944, 945, 963, 964, 973, 978, 980, 981, 982, 985, 990, 991, 993, 1010, 1011, 1012, 1022, 1023, 1024, 1025, 1030, 1034, 1035, 1036, 1037, 1041, 1042, 1043, 1044, 1045, 1050, 1057, 1062, 1068, 1069, 1070, 1074, 1085, 1092, 1111, 1112, 1113, 1114, 1115, 1118, 1119, 1129, 1142, 1143, 1158.

MANUFACTURING COMPANIES.

(*See* Development Companies; Long and Short Haul Section; Reshipment of Freight.)

5, 7, 8, 9, 673, 674, 704, 821.

MARKETS.

(*See* Long and Short Haul Section; Preference or Advantage; Competition.)

MILEAGE OF CARS.

(*See* Cars; Mileage Rates.)

41, 782, 783, 785.

MILEAGE RATES.

(*See* Reasonable Rates; Long and Short Haul Section.)

159, 160, 185, 282, 333, 341, 391, 468, 469, 473, 509, 510, 565, 599, 654, 695, 705, 794, 822, 824, 965.

MILEAGE TICKETS.

(*See* Tickets.)

45, 46, 47, 48, 51, 52, 53, 299, 347, 348, 778, 1064, 1065, 1066, 1067, 1100.

MILK RATES.

246, 247, 248, 249, 250, 251, 252, 253, 254, 876, 877, 878, 879, 880, 881, 882, 883, 974.

MILLING IN TRANSIT.

(*See* Long and Short Haul Section; Reshipment of Freight.)

114, 115, 116, 160, 315, 858, 975, 976, 1150, 1151, 1152.

MINISTERS OF RELIGION.

778.

NINTH SECTION, CONSTRUCTION OF.

(*See* Books, Papers, and Documents; Evidence; Subpœnas Duces Tecum; Reparation.)

NOTICE.

(*See* Practice; Tariffs.)

88, 240, 376, 486, 487, 537, 790, 906, 907, 908, 909, 910, 920.

OIL RATES.

(*See* Facilities of Traffic; Preference or Advantage; Unjust Discrimination.)

141, 142, 143, 144, 145, 146, 201, 202, 203, 204, 205, 206, 217, 277, 278, 279, 287, 288, 289, 498, 499, 500, 501, 502, 503, 516, 517, 518, 519, 520, 521, 639, 640, 641, 642, 643, 644, 669, 670, 671, 672, 714, 729, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809.

OPERATING EXPENSES.

(*See* Cost of Carriage.)

83, 285, 476, 477, 478, 484, 747, 748, 749, 751, 752, 753, 754, 824, 846, 868, 880, 883, 917, 919, 971, 1123.

OVERCHARGE.

(*See* Reasonable Rates; Reparation.)

PARALLEL LINES.

(*See* Competition; Pooling of Freight.)

PARTIES.

(*See* Complaint; Practice.)

59, 68, 88, 135, 147, 207, 208, 229, 256, 283, 325, 328, 330, 389, 390, 415, 465, 511, 534, 535, 536, 537, 574, 578, 584, 634, 635, 657, 695, 772, 813, 836, 869, 876, 889, 949, 960, 1088.

PARTY RATES.

348, 349, 418, 419

PASSENGERS.

(*See* Cars; Free Passes and Free Transportation; Preference or Advantage; Reasonable Rates; Unjust Discrimination.)

45, 46, 47, 48, 51, 52, 53, 69, 70, 71, 92, 93, 94, 118, 119, 120, 269, 270, 271, 291, 292, 293, 294, 295, 296, 297, 298, 299, 345, 346, 347, 348, 349, 367, 368, 369, 378, 418, 419, 427, 428, 429, 612, 613, 614, 615, 630, 713, 773, 774, 775, 776, 778, 786, 868, 873, 874, 879, 884, 963, 964, 965, 977, 1064, 1065, 1066, 1067, 1100, 1101, 1102, 1103, 1104, 1106.

PENDING PROCEEDINGS.

(*See* Practice.)

65, 273, 673, 777, 820, 1063, 1071.

PERISHABLE FREIGHT.

576, 582, 583, 584, 599, 606, 621, 622, 623, 624, 625, 633, 689, 690, 691, 710, 711, 712, 716, 780, 781, 783, 784, 785, 864, 971, 1086, 1087, 1135.

PLEADING.

(*See* Practice.)

POOLING OF FREIGHT.

(*See* Contracts.)

281, 632, 672, 742, 754, 760, 764, 766, 767, 1135.

PRACTICE.

(*See* Complaint; Evidence; Interstate Commerce Commission; Jurisdiction; Parties.)

54, 59, 60, 61, 65, 72, 76, 77, 79, 88, 95, 101, 102, 129, 132, 133, 134, 135, 136, 147, 161, 183, 199, 200, 207, 229, 236, 237, 238, 240, 246, 256, 258, 277, 283, 325, 326, 328, 357, 358, 370, 371, 372, 373, 379, 380, 381, 387, 388, 406, 408, 409, 410, 411, 485, 486, 487, 494, 496, 511, 519, 525, 527, 528, 532, 534, 537, 538, 539, 544, 545, 551, 552, 553, 554, 560, 569, 572, 573, 577, 578, 580, 584, 588, 599, 601, 614, 624, 634, 636, 640, 643, 644, 657, 658, 661, 666, 684, 686, 692, 695, 699, 702, 703, 711, 714, 715, 729, 755, 759, 761, 769, 772, 777, 789, 799, 806, 807, 808, 809, 830, 831, 834, 835, 836, 840, 848, 850, 857, 864, 866, 869, 875, 876, 885, 889, 910, 923, 924, 949, 956, 958, 959, 960, 961, 994, 1000, 1027, 1037, 1063, 1071, 1076, 1079, 1086, 1088, 1093, 1110, 1115, 1119, 1124, 1146.

PREFERENCE OR ADVANTAGE.

(*See* Facilities of Traffic; Long and Short Haul Section; Reasonable Rates; Relative Rates; Unjust Discrimination.)

5, 6, 8, 63, 64, 73, 74, 81, 82, 85, 87, 88, 92, 93, 94, 107, 108, 109, 111, 112, 115, 116, 118, 119, 120, 141, 142, 143, 144, 145, 146, 151, 153, 154, 155, 156, 172, 180, 181, 182, 201, 203, 205, 209, 220, 221, 245, 252, 260, 262, 265, 268, 303, 304, 306, 313, 314, 324, 327, 330, 337, 340, 341, 367, 413, 414, 424, 432, 435, 440, 442, 443, 450, 452, 453, 454, 455, 467, 472, 475, 477, 483, 490, 494, 497, 498, 500, 501, 504, 505, 506, 507, 514, 517, 518, 528, 531, 538, 539, 541, 546, 547, 548, 553, 554, 555, 556, 564, 565, 567, 583, 584, 585, 589, 595, 600, 608, 612, 613, 615, 630, 632, 636, 638, 641, 653, 654, 655, 656, 657, 661, 677, 678, 679, 681, 682, 692, 696, 697, 698, 699, 703, 704, 705, 706, 707, 708, 716, 722, 726, 732, 743, 749, 752, 759, 760, 762, 764, 768, 777, 791, 792, 798, 812, 815, 818, 819, 822, 825, 827, 837, 842, 845, 847, 852, 854, 855, 858, 859, 860, 862, 864, 865, 873, 880, 882, 883, 886, 887, 888, 889, 890, 891, 892, 899, 901, 902, 903, 904, 905, 915, 916, 917, 918, 924, 928, 929, 930, 931, 933, 938, 942, 948, 954, 955, 967, 968, 970, 976, 978, 979, 981, 982, 993, 1002, 1020, 1021, 1023, 1024, 1030, 1034, 1035, 1038, 1044, 1050, 1051, 1052, 1053, 1054, 1056, 1059, 1060, 1061, 1062, 1069, 1070, 1074, 1075, 1085, 1091, 1092, 1095, 1096, 1097, 1098, 1100, 1101, 1102, 1103, 1104, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1124, 1125, 1126, 1129, 1133, 1150.

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92, 93, 94, 118, 119, 120, 339, 340, 367, 368, 369, 413, 414, 493, 617, 698, 730, 793, 797, 812, 837, 842, 860, 873, 880, 882, 883, 912, 915, 931, 938, 948, 959, 976, 979, 1020, 1023, 1030, 1034, 1035, 1044, 1066, 1075, 1125, 1126, 1129, 1133, 1139, 1145, 1149.

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148, 149, 358, 446, 470, 471, 477, 488, 497, 501, 506, 534, 535, 537, 546, 547, 582, 583, 589, 590, 714, 994, 1008.

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50, 472, 569, 570, 618, 626, 835, 844, 846, 920, 934, 935, 941, 961, 995, 996, 1027, 1076, 1090, 1122, 1142, 1143.

RATES.

(*See* Through Rates; Local Rates; Through and Local Rates; Through Routes and Through Rates; Unjust Discrimination; Reasonable Rates; Preference or Advantage; Relative Rates; Mileage Rates; Tariffs.)

RATES, UNREASONABLY LOW.

(*See* Unjust Discrimination.)

242, 243, 244, 245, 292, 294, 334, 828, 870, 885, 940, 977, 1025.

REASONABLE RATES.

73, 74, 75, 80, 83, 84, 107, 108, 109, 110, 111, 112, 113, 125, 126, 127, 128, 129, 130, 159, 160, 180, 181, 182, 185, 186, 187, 188, 189, 190, 194, 195, 196, 197, 198, 200, 207, 209, 212, 213, 214, 215, 216, 217, 221, 222, 223, 231, 232, 234, 241, 242, 243, 244, 246, 247, 248, 249, 250, 251, 252, 253, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 281, 283, 285, 286, 287, 288, 289, 290, 304, 314, 316, 320, 321, 322, 323, 324, 327, 328, 332, 333, 334, 335, 336, 337, 353, 354, 355, 378, 391, 392, 393, 394, 395, 396, 398, 399, 400, 401, 402, 403, 404, 405, 416, 417, 423, 424, 425, 426, 429, 433, 434, 435, 436, 437, 438, 458, 460, 462, 463, 464, 467, 468, 469, 470, 471, 472, 473, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 541, 542, 543, 545, 553, 554, 555, 559, 560, 561, 562, 563, 567, 568, 569, 570, 575, 576, 581, 582, 583, 584, 599, 600, 601, 605, 606, 607, 608, 617, 618, 619, 620, 621, 622, 623, 626, 627, 628, 631, 632, 633, 638, 642, 643, 644, 651, 652, 653, 654, 655, 656, 657, 660, 662, 663, 664, 665, 666, 667, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 681, 682, 683, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 702, 703, 704, 705, 706, 707, 708, 709, 710, 712, 716, 720, 723, 726, 737, 738, 741, 745, 746, 747, 748, 751, 758, 761, 781, 784, 785, 788, 790, 792, 793, 798, 811, 812, 831, 832, 833, 837, 842, 845, 846, 849, 859, 864, 865, 866, 868, 873, 874, 880, 881, 882, 883, 888, 891, 892, 905, 915, 916, 917, 918, 919, 920, 924, 925, 929, 930, 931, 934, 935, 938, 940, 947, 948, 949, 957, 959, 965, 971, 972, 973, 975, 976, 978, 982, 990, 995, 996, 997, 999, 1000, 1002, 1003, 1009, 1014, 1016, 1017, 1019, 1020, 1021, 1025, 1026, 1029, 1030, 1031, 1033, 1034, 1035, 1046, 1048, 1050, 1051, 1052, 1053, 1054, 1056, 1057, 1060, 1061, 1062, 1068, 1075, 1078, 1079, 1080, 1081, 1082, 1083, 1086, 1089, 1090, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1120, 1123, 1127, 1129, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1152, 1153, 1154, 1155, 1156.

REBATES.

(*See* Preference or Advantage.)

363, 364, 427, 428, 429, 452, 453, 454, 455, 589, 609, 610, 611, 673, 674, 675, 722, 870.

RECEIVERS.

95, 658, 686, 717, 801, 830.

REFRIGERATOR CARS.

784, 785.

RELATIVE RATES.

(*See* Reasonable Rates.)

73, 81, 112, 121, 122, 143, 159, 160, 255, 261, 262, 281, 289, 305, 312, 327, 333, 392, 394, 405, 420, 421, 422, 423, 424, 425, 426, 439, 440, 441, 467, 470, 474, 475, 487, 488, 489, 491, 492, 506, 507, 508, 509, 510, 511, 538, 539, 546, 547, 548, 568, 582, 583, 586, 587, 588, 593, 594, 607, 608, 636, 651, 652, 653, 655, 656, 659, 660, 671, 673, 674, 675, 679, 685, 687, 698, 707, 708, 710, 711, 712, 731, 734, 812, 818, 819, 821, 837, 852, 881, 883, 928, 934, 940, 941, 947, 948, 972, 975, 976, 998, 999, 1002, 1014, 1027, 1028, 1029, 1031, 1046, 1066, 1068, 1101, 1102, 1104, 1120, 1122, 1124, 1125, 1126, 1142, 1143.

RELIEF FROM THE OPERATION OF THE FOURTH SECTION.

(*See* Long and Short Haul Section.)

1, 662, 699, 771, 773, 774, 775, 776, 779, 786, 787, 794, 797, 820, 841, 848, 870, 884, 913, 914, 923, 963, 964.

REPARATION.

(*See* Practice.)

90, 91, 140, 153, 366, 371, 378, 408, 463, 464, 532, 580, 606, 608, 616, 617, 618, 624, 625, 671, 672, 685, 686, 689, 690, 691, 699, 708, 728, 735, 790, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 833, 853, 867, 869, 876, 885, 908, 958, 1000, 1008, 1036, 1079, 1080, 1083, 1084, 1090, 1091, 1099, 1121, 1136, 1137, 1141, 1152.

REPLICATION.

(*See* Practice.)

76, 406.

RESHIPMENT OF FREIGHT.

(*See* Milling in Transit.)

5, 6, 7, 8, 9, 111, 112, 113, 114, 115, 116, 160, 315, 400, 401, 416, 417, 858, 899, 900, 962.

RETURN LOADS.

(*See* Cars; Long and Short Haul Section.)

402, 468, 732, 913, 974.

ROUTING OF FREIGHT.

(*See* Through Routes; Through Rates.)

462, 463, 464, 746, 747, 748, 867, 894, 895, 896, 897, 898, 946, 966, 1037, 1103, 1133.

SAFETY APPLIANCES.

829, 932, 1049.

SECOND SECTION, CONSTRUCTION OF.

(*See* Unjust Discrimination.)

SEVENTEENTH SECTION, CONSTRUCTION OF.

(*See* Interstate Commerce Commission; Practice.)

SEVENTH SECTION, CONSTRUCTION OF.

(*See* Connecting Lines; Continuous Carriage of Freights; Through Rates.)

SIXTEENTH SECTION, CONSTRUCTION OF.

(*See* Fourteenth, Fifteenth, and Sixteenth Sections, Construction of.)

SIXTH SECTION, CONSTRUCTION OF.

(*See* Export Rates; Import Rates; Interstate Commerce Commission; Jurisdiction; Notice; Tariffs.)

SOAP RATES.

474, 475, 493, 552, 593, 594.

SOLDIERS AND SAILORS.

14.

SPECIAL RATES.

(*See* Rebates.)

209, 320, 458, 553, 559, 560, 743, 960, 961, 962, 1065, 1066.

SPECIAL TRAIN SERVICE.

(*See* Facilities of Traffic.)

504, 505, 508, 571, 575, 576, 581, 582, 583, 584, 599, 605, 606, 623, 624, 689, 699, 709, 710, 712, 716, 917.

STATE RAILROAD COMMISSIONS.

(*See* Practice.)

398, 399, 666, 850, 943, 965, 972.

STATE RAILROADS.

(*See* Interstate Commerce; Facilities of Traffic; Long and Short Haul Section; Connecting Lines; Through Rates; Local Rates.)

450, 451, 601, 666, 695.

STOPPAGE IN TRANSIT.

(*See* Milling in Transit; Reshipment of Freight.)

STORAGE OF FREIGHT.

960, 961, 962, 1074, 1075, 1078.

STRAWBERRY RATES.

623, 625, 780, 781, 782, 783, 784, 785.

STREET RAILWAYS.

871, 873, 874.

SUBPŒNAS DUCES TECUM.

(*See* Practice; Books, Papers, and Documents.)

379, 380, 381, 382, 383, 384, 385, 386.

TARIFFS.

(*See* Notice; Practice.)

78, 141, 157, 158, 171, 173, 230, 239, 265, 291, 296, 337, 345, 347, 353, 354, 356, 360, 361, 363, 364, 374, 376, 377, 407, 408, 418, 419, 448, 451, 452, 453, 454, 455, 458, 459, 460, 461, 465, 473, 478, 485, 494, 495, 496, 517, 520, 557, 568, 573, 577, 578, 579, 589, 602, 603, 607, 673, 675, 724, 772, 828, 843, 844, 860, 861, 863, 892, 893, 894, 896, 897, 898, 906, 907, 908, 909, 910, 915, 924, 961, 962, 988, 992, 1004, 1015, 1016, 1036, 1047, 1078, 1087, 1097, 1106, 1130, 1131, 1132, 1138, 1139, 1140, 1151, 1152, 1153, 1154, 1155.

TERMINAL CHARGES, EXPENSES, AND STATIONS.

(*See* Facilities of Traffic.)

374, 394, 538, 539, 579, 617, 883, 950, 952, 953, 954, 955, 957, 959, 960, 961, 962, 1032, 1033, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1116, 1117.

THIRD PARTIES.

(*See* Practice.)

545, 869.

THIRD SECTION, CONSTRUCTION OF.

(*See* Preference or Advantage; Through Routes; Through Rates; Facilities of Traffic; Relative Rates; Unjust Discrimination.)

THIRTEENTH SECTION, CONSTRUCTION OF.

(*See* Complaint; Interstate Commerce Commission.)

THROUGH RATES.

(*See* Mileage Rates; Reasonable Rates; Local Rates; Through Routes.)

75, 89, 128, 184, 185, 196, 213, 214, 215, 216, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 323, 324, 346, 391, 416, 456, 457, 509, 526, 528, 529, 530, 531, 532, 571, 599, 604, 607, 608, 619, 636, 660, 695, 706, 716, 718, 721, 746, 747, 748, 749, 797, 802, 810, 811, 813, 822, 849, 856, 858, 867, 868, 874, 893, 894, 895, 896, 897, 898, 899, 915, 921, 924, 939, 952, 965, 988, 992, 1002, 1006, 1016, 1017, 1018, 1024, 1034, 1035, 1040, 1060, 1061, 1069, 1070, 1088, 1089, 1090, 1108, 1109, 1110, 1123, 1139, 1150, 1151, 1152.

THROUGH ROUTES.

(*See* Through Rates.)

350, 351, 448, 449, 450, 451, 462, 463, 464, 526, 528, 530, 531, 532, 564, 590, 591, 592, 736, 746, 797, 802, 825, 856, 858, 867, 868, 924, 966, 1017, 1024, 1034, 1035, 1060, 1061, 1108, 1109, 1110, 1130, 1131, 1133, 1151.

TICKET BROKERAGE.

(*See* Tickets.)

43, 295, 297, 298.

TICKETS.

(*See* Passengers.)

25, 26, 27, 28, 29, 43, 51, 52, 53, 69, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 345, 346, 347, 348, 349, 350, 351, 378, 418, 419, 427, 428, 429, 743, 775, 776, 873, 874, 1064, 1065, 1066, 1067, 1100.

TRADE CENTERS.

(*See* Long and Short Haul Section; Unjust Discrimination; Preference or Advantage.)

TRAIN LOADS.

892.

TRANSPORTATION SUBJECT TO THE ACT.

(*See* Through Routes; Through Rates; Reasonable Rates; Relative Rates; Preference or Advantage; Long and Short Haul Section; Unjust Discrimination; Classification; Free Passes and Free Transportation.)

TWELFTH SECTION, CONSTRUCTION OF.

(*See* Books, Papers, and Documents; Evidence; Interstate Commerce Commission; Notice; Practice.)

TWENTY-FIRST AND TWENTY-SECOND SECTIONS, CONSTRUCTION OF.

(*See* Free Passes and Free Transportation; Interstate Commerce Commission; Passengers; Practice; Tariffs; Tickets.)

UNDERBILLING.

162, 163, 164, 165, 166, 167, 168, 169, 170, 755, 1048.

UNITED STATES COURTS.

(*See* Practice.)

485, 486, 717, 735, 738, 830, 956

UNITED STATES SENATE.

(*See* Hearings.)

476, 483, 485.

UNJUST DISCRIMINATION.

5, 6, 7, 8, 9, 12, 13, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 51, 52, 53, 63, 64, 69, 70, 73, 74, 75, 80, 81, 82, 85, 86, 87, 88, 103, 104, 105, 106, 116, 117, 118, 119, 120, 121, 122, 123, 124, 137, 138, 139, 141, 142, 143, 144, 145, 149, 150, 151, 152, 153, 154, 155, 156, 159, 160, 173, 179, 180, 191, 201, 202, 203, 204, 205, 206, 253, 259, 268, 271, 276, 278, 279, 288, 290, 295, 297, 324, 329, 330, 332, 333, 334, 349, 353, 354, 355, 364, 367, 368, 369, 374, 375, 377, 412, 418, 419, 426, 427, 428, 432, 435, 450, 452, 453, 454, 455, 458, 459, 467, 469, 470, 473, 475, 488, 497, 498, 499, 500, 501, 502, 504, 505, 506, 528, 529, 532, 538, 539, 545, 546, 548, 550, 555, 556, 558, 562, 566, 577, 578, 589, 590, 593, 594, 608, 610, 611, 612, 613, 615, 630, 636, 637, 639, 640, 641, 642, 643, 644, 648, 649, 661, 662, 668, 669, 670, 674, 676, 677, 678, 683, 710, 711, 712, 713, 714, 716, 722, 723, 726, 728, 730, 733, 739, 743, 762, 767, 777, 778, 781, 788, 790, 796, 799, 802, 804, 808, 827, 837, 847, 851, 853, 858, 860, 861, 865, 967, 873, 880, 881, 882, 883, 886, 889, 891, 892, 901, 905, 912, 915, 917, 919, 924, 925, 928, 929, 930, 931, 942, 948, 953, 954, 955, 980, 982, 990, 992, 1011, 1014, 1029, 1039, 1062, 1064, 1065, 1066, 1069, 1070, 1073, 1085, 1091, 1095, 1096, 1097, 1098, 1100, 1101, 1102, 1104, 1108, 1109, 1110, 1116, 1117, 1124, 1125, 1126, 1136, 1137, 1139, 1145, 1149.

VALUE.

(*See* Classification.)

83, 403, 465, 687, 792, 838, 839, 995, 1029, 1147, 1148, 1149.

VOLUME OF TRAFFIC.

(*See* Carload Rates; Classification.)

34, 103, 122, 466, 605, 690, 731, 892.

WATER COMPETITION.

(*See* Long and Short Haul Section; Circumstances and Conditions; Preference or Advantage; Competition.)

85, 86, 87, 188, 190, 191, 239, 264, 400, 412, 438, 439, 456, 457, 468, 469, 473, 494, 495, 496, 509, 510, 511, 516, 517, 522, 523, 521, 526, 528, 529, 530, 531, 532, 543, 581, 582, 583, 584, 590, 591, 595, 596, 597, 598, 602, 605, 620, 643, 644, 646, 647, 648, 649, 651, 652, 653, 656, 657, 661, 662, 663, 664, 665, 666, 673, 674, 675, 676, 677, 679, 692, 693, 703, 707, 762, 823, 826, 841, 902, 942, 943, 944, 973, 993, 1014, 1040, 1068, 1092, 1113, 1114, 1118, 1119, 1129, 1142, 1143, 1152, 1153, 1154.

WEIGHT.

(*See* Carload Rates; Classification; Reasonable Rates.)

395, 397, 409, 493, 684, 727, 838, 911, 912, 1087, 1148.

WHOLESALE RATES.

(*See* Circumstances and Conditions; Carload Rates; Classification.)

33, 35, 36, 44, 46, 47, 48, 348, 349, 418, 419, 892.

APPENDIX C.

A. FORMAL PROCEEDINGS INSTITUTED BEFORE THE COMMISSION DURING THE YEAR.

B. INFORMAL COMPLAINTS FILED WITH THE COMMISSION DURING THE YEAR.

A. FORMAL PROCEEDINGS INSTITUTED BEFORE THE COMMISSION DURING THE YEAR.

610. Leadville Board of Trade against Colorado Midland Railway Company and others.
Complaint alleges violation of sections 1, 2, 3, and 4 in the transportation of freight to Leadville, Colo., from Missouri River points and points east thereof.
January 2, 1902. Complaint filed.
January 18, to June 1, 1902. Answers filed.
June 20, 1902. Hearing.

611. Ulrick and Williams against Lake Shore and Michigan Southern Railway Company and others.
Complaint alleges violation of sections 3 and 4 in the transportation of ice from Norvell, Hillsdale, Bankers, and other points in Michigan, to Springfield, Ohio. Reparation asked.
January 9, 1902. Complaint filed.
February 2 to February 8, 1902. Answers filed.
November 8, 1902. Hearing.
January 8, 1903. Brief filed.

612. L. H. Hallam against Pecos Valley and Northeastern Railway Company and others.
Complaint alleges violation of sections 1 and 3 in the transportation of crude or fuel petroleum oil from Pecos, Tex., to Roswell, N. Mex., and from Amarilla, Tex., to Roswell.
January 29, 1902. Complaint filed.
February 19, 1902. Answers filed.
December 1, 1902. Order of dismissal entered.

613. Chamber of Commerce of Chattanooga against Southern Railway Company and others.
Complaint alleges violation of sections 1, 3, and 4 in the transportation of various kinds of freight from Boston, New York, Philadelphia, Baltimore, and other eastern seaboard points to Chattanooga, Tenn.
February 14, 1902. Complaint filed.
March 5 to June 6, 1902. Answers filed.
May 26 and 27, 1902. Hearing.
July 24 to August 26, 1902. Depositions filed.
October 21, 1902. Hearing of oral argument.
October 21 to November 21, 1902. Proposed findings of fact filed.

614. Board of Trade of Kansas City, Mo., against Missouri Pacific Railway Company and others.
Complaint alleges violation of sections 1, 2, and 3, in rates on grain from Kansas and Nebraska to and from Kansas City and through to Southern and Eastern markets.
February 26, 1902. Complaint filed.
March 12 and 28, 1902. Applications for additional time to file answer filed.
No answers filed.

615. Railroad Commission of Kentucky against Louisville and Nashville Railroad Company.
Complaint alleges violation of sections 2 and 3 in discrimination against Central Stock Yards in favor of Bourbon Stock Yards, in Louisville, in matter of shipments and delivery of shipments of cattle.
February 26, 1902. Complaint filed.
March 19, 1902. Answer filed.
April 3–5, 1902. Hearing.
May 5, 1902. Briefs filed.
May 5–6, 1902. Hearing of oral argument.

616. Diamond Mills against Boston and Maine Railroad Company.
Complaint alleges violation of sections 1, 2, 3, and 6, in rates on milling-in-transit shipments of corn and corn products from Western points to Boston and other New England points. Reparation asked.
March 13, 1902. Complaint filed.
April 11, 1902. Answer filed.
May 31, 1902. Hearing.
June 27, 1902. Hearing of oral argument.
July 5 to 10, 1902. Briefs filed.
November 17, 1902. Report and opinion filed.

617. S. Marten against Louisville and Nashville Railroad Company.
Complaint alleges violation of sections 1, 3, and 4 in the transportation of lumber from Fountain Head, Gallatin, Pilot Knob, and St. Blaise, Tenn., to Detroit, Mich.
March 17, 1902. Complaint filed.
April 5, 1902. Answer filed.
October 7, 1902. Hearing.
October 9, 1902. Hearing.
October 23, 1902. Hearing of oral argument.

618. Chicago Live Stock Exchange against Atchison, Topeka and Santa Fe Railway Company and others.
Complaint alleges violation of sections 1 and 3 in the transportation of live stock in carloads from points in Iowa, Missouri, Minnesota, and Wisconsin to Chicago, Ill.
April 5, 1902. Complaint filed.
April 18 to November 6, 1902. Answers filed.
May 15, 1902. Hearing.
November 6, 1902. Intervening petition filed.
November 6, 1902. Motion of complainant to dismiss Atchison, Topeka and Santa Fe Railway Company filed.
November 6–8, 1902. Hearing.
January 20, 1903. Hearing.
January 31, 1903. Intervening petition filed.

619. F. C. Sayles against New York, New Haven and Hartford Railroad Company and others.
Complaint alleges violation of sections 1, 2, and 3 in transportation of two cows and a calf from Newport, Vt., to Pawtucket, R. I.
April 14, 1902. Complaint filed.
May 5 to 23, 1902. Answers filed.
November 28, 1902. Hearing.
January 5, 1903. Brief filed.

620. Aberdeen Group Commercial Association against Mobile and Ohio Railroad Company.
Complaint alleges violation of sections 1, 3, and 4 in transportation of freight from Cairo, St. Louis, and East St. Louis to Tupelo, Aberdeen, West Point, Starkville, and Columbus.
April 17, 1902. Complaint filed.
May 28, 1902. Answer filed.
May 29, 1902. Amended answer filed.
May 29–30, 1902. Hearing.
November 9 to 11, 1902. Deposition filed.
November 13, 1902. Hearing of oral argument.
November 13, 1902, to January 16, 1903. Briefs filed.

621. In the Matter of Rates and Practices by the Mobile and Ohio Railroad Company in the Transportation to Vicksburg, Miss., of Grain Shipped from or through St. Louis or East St. Louis.
April 18, 1902. Order entered.
April 25, 1902. Hearing.
May 17, 1902. Hearing.

622. In the Matter of the Transportation of Immigrants from New York and other Atlantic Ports to Western Destinations.
April 21, 1902. Order entered.
May 2, 1902. Hearing.
May 10, 1902. Brief filed.

624. Mayor and City Council of Wichita, Kans., against Atchison, Topeka and Santa Fe Railway Company and others.
Complaint alleges violation of sections 1, 2, 3, and 4 in transportation of grain and grain products from Wichita, Kans., to Galveston, Tex.
May 1, 1902. Complaint filed.
May 20 to July 26, 1902. Answers filed.
May 13, 1902. Intervening petition filed.
September 24–26, 1902. Hearing.
January 13, 1903. Brief filed.

625. Cincinnati Chamber of Commerce and Merchants' Exchange against Baltimore and Ohio Southwestern Railroad Company and others.
Complaint alleges violation of section 3 in early closing of freight station at Cincinnati.
May 1, 1902. Complaint filed.
May 12 to June 1, 1902. Answers filed.
November 8, 1902. Hearing.

626. Washington Red Shingle Manufacturing Association and Pacific Coast Lumber Manufacturers' Association against Chicago, Burlington and Quincy Railroad Company and others.
Complaint alleges violations of sections 1, 2, and 3 in transportation of lumber and shingles in carloads from Minnesota Transfer to St. Louis and Chicago.
May 12, 1902. Complaint filed.
May 24 to June 9, 1902. Answers filed.
October 16, 1902. Order of dismissal entered.

627. Mayor and City Council of Wichita, Kans., against Atchison, Topeka and Santa Fe Railway Company and others.
Complaint alleges violation of sections 1, 2, and 3 in transportation of coal in carload lots from Minden, Mo.; McAlester, Ind. T., and Russellville, Ark., to Wichita, Kans.
May 20, 1902. Complaint filed.
June 16 to July 30, 1902. Answers filed.
September 26, 1902. Hearing.

628. Mayor and City Council of Wichita, Kans., against Illinois Central Railroad Company and others.
Complaint alleges violation of sections 1, 2, 3, and 4 in transportation of bananas in carload lots from New Orleans, La., to Wichita, Kans.
May 20, 1902. Complaint filed.
June 9 to 25, 1902. Answers filed.
September 25, 1902. Case called for hearing. Complaint satisfied by reduction of rates. No testimony taken.

629. Mayor and City Council of Wichita, Kans., against Atchison, Topeka and Santa Fe Railway Company and others.
Complaint alleges violations of sections 1, 2, 3, and 4 in transportation of sugar from Rocky Ford and Sugar City, Colo., to Wichita Kans.
May 20, 1902. Complaint filed.
June 13 to September 26, 1902. Answers filed.
September 27, 1902. Hearing.

630. Mayor and City Council of Wichita, Kans., against Chicago, Rock Island and Pacific Railway Company and others.
Complaint alleges violation of sections 1, 2, 3, and 4 in transportation of lumber in carloads from points in Arkansas, Texas, and Louisiana to Wichita, Kans.
May 20, 1902. Complaint filed.
June 5 to September 26, 1902. Answers filed.
September 26, 1902. Hearing.

631. In the Matter of Alleged Unlawful Rates and Practices in the Transportation of Coal and Other Commodities between points in the territory north of the Ohio River and east of the Missouri and Mississippi rivers.
June 5, 1902. Order entered.
June 17, 1902. Hearing.

632. John W. Blackman, jr., against Southern Railway Company.
Complaint alleges violation of sections 1, 3, and 6 in storage charge on sugar at Macon, Ga.
June 12, 1902. Complaint filed.
July 7, 1902. Answer filed.

633. John W. Blackman, jr., against Atlantic Coast Line Railroad Company.
Complaint alleges violation of sections 1, 3, and 6 in storage charge on molasses at Columbia, S. C.
June 12, 1902. Complaint filed.
July 5, 1902. Answer filed.
July 31, 1902. Order of dismissal entered.

634. Mayor and City Council of Wichita, Kans., against Missouri Pacific Railway Company and others.
Complaint alleges violation of sections 2 and 3 in transportation of flour and wheat from Wichita and other points in Kansas and Missouri to points in Texas.
June 23, 1902. Complaint filed.
July 8 to September 5, 1902. Answers filed.
September 18, 1902. Intervening petition filed.
September 25–26, 1902. Hearing.
September 26 to November 22, 1902. Arguments filed.

635. St. Louis Traffic Bureau against Kansas City Southern Railway Company and others.
Complaint alleges violation of sections 1, 2, and 3 for transportation of freight from St. Louis, Mo., to Mansfield, Leesville, and other points in Louisiana, and Marshall and other points in Texas.
July 1, 1902. Complaint filed.
July 21 to August 4, 1902. Answers filed.
October 27, 1902. Assignment of case for hearing canceled by request of complainant.

636. Mayor and City Council of Wichita, Kans., against St. Louis and San Francisco Railroad Company and others.
Complaint alleges violation of sections 1, 2, 3, and 4 in transportation of freight from Dayton, Cleveland, Detroit, and Pittsburg to Wichita, Kans.
July 8, 1902. Complaint filed.
July 18 to August 18, 1902. Answers filed.
September 25, 1902. Case called for hearing at Wichita. Complaint satisfied by reduction of rates. No testimony taken.

637. Charlotte Shippers' Association against Southern Railway Company and others.
Complaint alleges violation of sections 1, 2, and 3 in transportation of freight from Boston, Providence, New York, Philadelphia, and Baltimore to Charlotte, N. C.
July 24, 1902. Complaint filed.
August 9 to 16, 1902. Answers filed.
November 24–25, 1902. Hearing.

638. Charlotte Shippers' Association against Seaboard Air Line Railway and others.
Complaint alleges violation of sections 1, 2, 3, and 4 in transportation of freight from Chicago, East St. Louis, Ill., St. Louis, Mo., Cincinnati, Ohio, Louisville, Ky., Nashville, and Memphis, Tenn., to Charlotte, N. C.
July 24, 1902. Complaint filed.
August 9 to August 25, 1902. Answers filed.
November 24–25, 1902. Hearing.

639. John W. Blackman, jr., against Columbia, Newberry, and Laurens Railroad Company.
Complaint alleges violation of sections 1, 3, and 6 in storage charge on molasses at Columbia, S. C.
August 4, 1902. Complaint filed.
August 30, 1902. Answer filed.

640. Rockhill Buggy Company against Southern Railway Company and others.
Complaint alleges violation of sections 1, 2, 3, and 4 in transportation of buggies from Rockhill, S. C., to Tallahassee, Fla.
August 30, 1902. Complaint filed.
September 21 and 22, 1902. Answers filed.

641. W. H. H. Macloon against Boston and Maine Railroad Company and others.
Complaint alleges violation of sections 1, 2, and 3 in transportation of passengers from Boston, Mass., to Janesville, Wis.
October 1, 1902. Complaint filed.
October 18 to November 3, 1902. Answers filed.
November 6, 1902. Hearing.

642. Derr Manufacturing Company against Pennsylvania Railroad Company and others.
Complaint alleges violation of sections 1 and 3 in classification of blacking daubers.
October 7, 1902. Complaint filed.
October 25 to 30, 1902. Answers filed.

643. Railroad Commission of Kentucky against Atlantic Coast Line Company and others.
Complaint alleges violation of section 5 in pooling of freights by Southern railways.
October 20, 1902. Complaint filed.
November 10 to 19, 1902. Answers filed.

644. William Randolph Hearst against Philadelphia and Reading Railway Company and others.
Complaint alleges violation of sections 1, 2, and 3 in transportation of anthracite coal in carloads from points in the anthracite coal region of Pennsylvania to New York and other Eastern points.
November 3, 1902. Complaint filed.
November 15 to 29, 1902. Answers filed.

645. In the Matter of the Transportation of Dressed Poultry in Refrigerator Cars by the Wabash Railroad Company.
November 26, 1902. Order entered.
December 19, 1902. Hearing.

B. INFORMAL COMPLAINTS FILED DURING THE YEAR FROM DECEMBER 1, 1901.

1985 Higher rate on sapolio than common soap powder from New York City to Pacific coast.
1986. Protest against classification of hay.
1987. Discrimination in rates favor Atlanta, Athens, and other points as against Gainesville, Ga.
1988. Loss of shipment of household goods between Pueblo and Florence, Colo.
1989. Alleged refusal to switch cars onto private track at New Orleans, La.
1990. Excessive rating of display cases in Southern classification.
1991. Failure to post tariff at Boardman, N. C.
1992. Loss on car of lumber by diversion in transit from White Springs, Fla., to Louisville, Ky.
1993. Discrimination in rates on oil from Oil City, Pa., to Capron, Ill., as compared with other points in Illinois and Wisconsin.
1994. Excessive rates on corn from St. Joseph, Mo., to Durant, Ind. T.
1995. Inability of railroads to furnish cars for shipment of grain from Akron, Iowa, to Kansas City, Mo.
1996. Inability of railroads to furnish cars for shipment of hay from St. Johns, Mich.
1997. Overcharge on shipment of granite from Barre, Vt., to Ravenwood, Ill.
1998. Rates on marble in carloads from Nelson, Ga., to Horse Cave, Ky., as compared to Louisville, Ky.
1999. Higher rate on cotton from Enfield, N. C., than from Newbern, N. C., to Petersburg, Va.
2000. Discriminating rates from Eastern cities to Richmond, Ky., as compared to Paris, Ky.
2001. Overcharge on car of corn shipped from Cheltanham, Md., to Baltimore, Md.
2002. Overcharge on car of lumber shipped from Wilsonville, Ala., to Hope, Ind.
2003. Higher rate on anthracite coal from Buffalo, N. Y., to Vassar, than Saginaw, Mich.
2004. Inability to obtain cars for shipments of corn from Jefferson, S. Dak., to Kansas City, Mo.
2005. Inability to obtain cars for shipment of corn from Churdan, Iowa, to Kansas City, Mo.
2006. Excessive rates in British territory and Alaska.
2007. Excessive charges on small shipments from Huntsville, Ala., to St. Louis and Cincinnati, Ohio.
2008. Discrimination in minimum carload weight of buggies from Connersville, Ind., to various points.
2009. Excessive charges on one bag of corks shipped from Lancaster, Pa., to Aberdeen, N. C.
2010. Discriminating rates on dressed meats, packing-house products, etc., from Missouri River points to Chicago, as compared with rates on live hogs and cattle.
2011. Discrimination in rates on potatoes from Gwinner, N. Dak., to Duluth and West Superior, as compared with the rates on same commodity from Lisbon, N. Dak., to points named.
2012. Routing on wheat in carloads from Pennsylvania points to Rochester, N. Y.
2013. Overcharge on shipment of flour from Nashville, Tenn., to Laurinburg, N. C.
2014. Excessive rate on rice, chaff, and hulls from New Orleans, La., to Chicago, Ill.
2015. Excessive rate on iron castings and truss rods from Dalton to Whitmore, S. C.
2016. Excessive rate on iron fence posts and hitching posts from Dalton, Ga., to New Orleans, La.
2017. Excessive rates on agricultural implements, carloads, from Dalton, Ga., to Memphis, Tenn., and Little Rock, Ark.
2018. Excessive rates on cotton from Whitakers, N. C., to Petersburg, Va.
2019. Advance in switching charges at Dayton, Ky.
2020. Discrimination in rates on clay in carloads against Langley, S. C., as compared with shipments from Macon, Ga.

2021. Excessive rates on grain between Milwaukee and Chicago to seaboard and points east of Indiana and Illinois State line.
2022. Discrimination in rates on chair stock from Gardner, Mass., to High Point, N. C., as compared with the rates to Cleveland, Knoxville, Tenn., and Marietta, Ga.
2023. Excessive rate on corn from Louisville, Ky., to Gilmores Mills, Va.
2024. Discrimination in rate on furniture from High Point, N. C., to Culpeper, Va., as compared to Washington, D. C.
2025. Rates from Vicksburg, Miss., to Timpson and other points in Texas higher than combinations of local rates to and from Shreveport, La.
2026. Discrimination in rates on lumber from Huntingburg, Ind., and other points to Chicago, Ill., as compared with rates from Evansville, Ind., to same point.
2027. Classification of cop tubes used in cotton mills for spinning purposes.
2028. Overcharge on one car hickory wood shipped from Andover, Conn., to Somerville, Mass.
2029. Excessive rates on grain from Templeton, Oxford, Chase, Boswell, and Talbot, Ind., to Eastern points.
2030. Overcharge on shipments of five crates hickory lumber from New London, Wis., to California.
2031. Increase in minimum carload weight (30,000 pounds) of oat hulls by official classification committee.
2032. Taking more coupons from mileage book than the actual number of miles traveled.
2033. Shipment of marble lost between Nelson, Ga., and Brownsville, Tenn.
2034. Discrimination in rates from St. Louis, Mo., and East St. Louis and Cairo, Ill., to several Mississippi points.
2035. Protest against classification of petroleum and its products in carloads in official classification territory.
2036. Excessive rates on lumber from points in West Virginia to various Western points.
2037. Excessive charge on car of live stock from Ord, Nebr., to Olds Alta, Canada.
2038. Excessive charge on two boxes of hardware shipped from Louisville, Ky., to El Reno, Okla.
2039. Excessive charge for switching car of corn at Curwensville, Pa.
2040. Excessive rates on buggies from Rock Hill, S. C., to Tallahassee, as compared with other Florida points.
2041. Excessive rate on shipment of buggies from Rock Hill, S. C., to Logansville, Ga.
2042. Discrimination in rates on salt in carload lots from Saltville, Va., to Dalton, Ga., as compared with Chattanooga, Tenn.
2043. Excessive rates on coal from Pittsburg, Kans., to Joplin, Mo.
2044. Overcharge on a shipment of gripping, lifting, and striking machines from Palestine, Tex., to Wheeling, W. Va.
2045. Discrimination in sale of home-seekers' tickets.
2046. Discrimination in rates on lumber from points in Alabama and Mississippi to St. Louis, Mo., as compared with rates to points in Arkansas and Louisiana west of the Mississippi River.
2047. Excessive charge on shipment of marble from Nelson, Ga., to Henderson, N. C.
2048. Higher rates on railroad ties than on lumber and telegraph poles from points between Norwich and Willimantic, Conn., to Portsmouth, Dover, and other points.
2049. Unreasonable delay in shipment of barb wire from Janesville, Wis., to Alliance, Nebr.
2050. Discrimination in rates on lumber from intermediate points to Chicago, as compared with rates from Minneapolis to Chicago.
2051. Overcharge on shipment of three cars of stock cattle from Kansas City, Mo., to Quimby, Iowa.
2052. Unreasonable rate on locomotive loaded on flat car from Castleberry, Ala., to Atlanta, Ga., as compared with rates from Mobile.
2053. Higher rates on nails from Chicago, Ill., to intermediate points than from Chicago to St. Paul and Minneapolis.
2054. Discrimination in matter of routing shipment of potatoes from Caribou, Me., to Philadelphia, Pa.
2055. Overcharge on shipments of lumber from Laurel to Omaha, Nebr., and Mitchell, S. Dak. Also refusal to respect shippers' routing of the same.
2056. Overcharge on shipment of household goods from Stuttgart, Ark., to Danforth, Ill.
2057. Unreasonable rates on flour from Wilson to Kansas City, Mo., for reconsignment.
2058. Refusal to supply cars for shipments of scrap iron from New York to Wilmington, Del.

2059. Overcharge on carload shipment of hickory wood from Andover to Somerville, Mass.
2060. Excessive rates on furniture from Evansville, Ind., to Atlanta and other Southern points, as compared with rates in the opposite direction.
2061. Failure to advise consignee at New York of receipt of shipments of army uniforms from Racine, Wis.
2062. Unreasonable delay in transit of carload of hogs from Carrollton, Ill., to St. Louis, Mo.
2063. Refusal of freight pool classification committee to give carload rating on shipments of carriage goods from Cortland, N. Y., to Western points.
2064. Unreasonable delay in shipment of steel roofing from Chicago to Mont Vale, Va.
2065. Refusal to give commodity rate on shipment of earthen paint from Dayton, Ohio, to El Paso, Tex.
2066. Discrimination in freight charges against Bluefield, W. Va., in favor of Roanoke, Lynchburg, and Norfolk, on shipments from the West.
2067. Discrimination against small shippers in furnishing cars at New Orleans, La.
2068. Relative rates on newspapers between New York and Pottsville, Pa., and intermediate points.
2069. Damage through delay in shipment of carload of peaches from Bridgeville, Del., to Jersey City.
2070. Discrimination in favor of certain firms in rates on grain from Kansas City, Mo., to various points.
2071. Higher rates on bridge iron to Joliet, Ill., from Pittsburg, Pa., than to Chicago, Ill., a longer haul.
2072. Overcharge on shipment of sheep from Barnum to Carlton, Minn.
2073. Discrimination against small shippers in rates on mixed carloads.
2074. Excessive charges on car of pulp wood shipped from Sleepy Creek, W. Va., to Spring Forge, Pa.
2075. Excessive rate on rough granite shipped from West Quincy, Mass.
2076. Excessive rate on lumber from southern points to Paterson, as compared with Newark, N. J.
2077. Higher rates for shorter distance from Sidney, Pa., to Buffalo, N. Y., than for the longer distance from Cortez.
2078. Overcharge on shipment of 40 bags of beans from Springfield, Mich., to Menominee, Mich.
2079. Overcharge on lumber shipped from Dahlia, Va., and Pleasant Hill, N. C., to New York City, N. Y.
2080. Refusal to put in side track at Mount Pleasant, Pa.
2081. Withdrawal of class rates without notice to the shippers.
2082. Unreasonable rates on lumber from points in Louisiana to points in Indian and Oklahoma Territories.
2083. Refusal to place a switch on a siding for loading coal in Pennsylvania.
2084. Delay in shipment of window display bonnets from Belchertown, Mass., to Toledo, Ohio.
2085. Erroneous billing of rough oak and hickory lumber as wagon material from Fayetteville, Ark., to El Paso, Tex.
2086. Delay in shipments of coal to Pontiac, Mich.
2087. Unreasonable rates on scrap iron from Wabash, Ind., to Chicago and Michigan City.
2088. Refusal to bill a carload of corn from Mondamin to Burr Oak, Kans.
2089. Excessive rate on stock cattle from Batavia, Iowa, to Lomax, Ill.
2090. Unreasonable rate on corrugated iron, carloads, from Canton, Ohio, to Los Angeles, Cal.
2091. Unreasonable delay in releasing freight from wharves, shipped from New Orleans to New York.
2092. Excessive rates on cotton from Little Rock to points in North and South Carolina.
2093. Discrimination in freight rates to points in Michigan.
2094. Excessive charges on shipment of two cows and one calf from Newport, Vt., to Pawtucket, R. I.
2095. Overcharge on one car of flour shipped from Norwich, Kans., to Carrollton, Mo.
2096. Discrimination in favor of competitors in rates on coal from Bens Creek, Pa., to tide water in New Jersey.
2097. Excessive rates on shipments of onions from Florida to New York City.
2098. Refusal to grant clergymen's privileges to spiritualists.
2099. Discrimination against certain dealers in rates on coal from anthracite district to Stroudsburg, Pa.

2100. Discrimination in wharfage and terminal charges between rival steamship lines at Savannah, Ga.
2101. Excessive rate on dried fruit from Green Forest, Ark., to St. Louis, Mo.
2102. Unreasonable rates by express company from East Aurora and Buffalo to Philadelphia.
2103. Unreasonable rates on cotton from Ruston, La., and stations north thereof, to Eldorado, Ark.
2104. Increase in minimum carload weight of lumber by Traffic Association.
2105. Rates on culled lumber in Arkansas.
2106. Higher rate on freight for shorter distance, from Gays, Ill., to Oaktown, Ind., than for the longer distance to Vincennes, Ind.
2107. Excessive charges on one car corn shipped from Sexton, Iowa, to Martinsburg, Mo.
2108. Discrimination against Eastern manufacturers in rates on bee hives and honey-box lumber from River Falls, Wis., to Reno, Nev.
2109. Excessive rates on combined blackboards and desks from Union City, Pa., to points in Oklahoma and Indian Territories.
2110. Higher rates on fertilizers from Wilmington, Del., to New Jersey and Long Island points than from Philadelphia.
2111. Unreasonable rates on wheat from Wichita, Kans., to Gulf ports, as compared with Missouri River points to the Gulf.
2112. Discrimination in rates on shipments of glass from Evansville, Ind., to points in North and South Carolina.
2113. Unreasonable freight rates by reason of arbitrary bridge charge from St. Louis, Mo., to points east thereof.
2114. Excessive rates on coal from Bergholz, Ohio, to North Benton and Phalanx, Ohio.
2115. Unreasonable demurrage charges on carload of cotton-seed hulls at Lumpkin, Ga.
2116. Relative passenger fares from Nashville to other points in Tennessee.
2117. Excessive charge on one car cowpeas shipped from Fort Valley, Ga., to Cobden, Ill.
2118. Rates on coal to Elmira, N. Y.
2119. Unreasonable rates on iron pipe from Kewanee, Ill., and Chicago, Ill., to Pacific coast points and to European ports.
2120. Loss of goods shipped from Addison, N. Y., to Mountain Grove, Mo.
2121. Discrimination in rates by express companies on religious books published by Allegheny, Pa., firm.
2122. Higher rates on lumber from points in Arkansas and Louisiana for the shorter haul to Augusta, Ingersoll, Driftwood, and Amarilla, than for the longer haul to Anthony, Kans.
2123. Rates on lumber from Virginia to Philadelphia, compared with rates from same points to New York City.
2124. Excessive rates on street-railway ties, as compared with rates on ties for steam railroad.
2125. Overcharge by express company on two bundles empty paper sacks from Allentown, Pa., to Charleston, S. C.
2126. Higher rates on lumber from intermediate points to Detroit, Mich., than from Nashville, Tenn., to Detroit.
2127. Liability of carrier for damages to shipments of lamps from Trenton, N. J., to various points.
2128. Refusal of railroad company to permit other than one hackman to solicit trade at Mount Vernon, Ohio.
2129. Excessive rate on lumber from Fort Valley, Ga., to Odenton, Md., as compared with rate from Valdosta, Ga., to same point.
2130. Objection of railroad company to location of an elevator at Sloan, Iowa.
2131. Excessive rate on stores, carloads, from Evansville, Ind., to Gainesville, Fla.
2132. Delay in movement of car of oil for Hull, Iowa.
2133. Discrimination against one transfer company in favor of another at St. Louis, Missouri.
2134. Unreasonable rates on common soap, less than carloads, St. Louis to Pittsburg, Tex.
2135. Discrimination in minimum weight on carload shipments of food products.
2136. Discrimination between rates of freight on cotton consigned from Southern points to New York and European points.
2137. Posting schedules in depot at Uhrichsville, Ohio.
2138. Excessive charges on two cars hay shipped from Telsa and Okmulgee, Ind. T.

2139. Unreasonable rates on lumber from points in Virginia and Tennessee to Pennington Gap, Va.
2140. Discrimination in passenger fares by passenger association.
2141. Unreasonable rates on ground flint from East Liverpool, Ohio, to various points.
2142. Refusal to redeem unused passenger fare ticket from Detroit to Canada.
2143. Discrimination in favor of publishers and dealers in rates on books shipped by express from Kansas City, Mo.
2144. Unreasonable rates on undressed marble from Proctor, Vt., to Logansport, Ind.
2145. Loss of bale of belting between New York City and Waterlick, Va.
2146. Rates on shipments of lumber from Southern points to Sioux City, Iowa.
2147. Underbilling and overcharging on freight shipments from points in Kansas.
2148. Failure of railroads to supply cars for corn shipments from Laplace, Ill.
2149. Unreasonable rates on marble and granite from New England points to Springfield, Ill.
2150. Unjust classification of dress-suit cases.
2151. Rates on cordwood, posts, and poles from points in Michigan.
2152. Rates on corrugated or sheet iron in car lots from Pittsburg, Pa., and other points in Pennsylvania and Ohio to Denver, Pueblo, and Trinidad, Colo.
2153. Unreasonable rates from St. Louis and Chicago to Missouri River points.
2154. Comparative freight rates in Illinois, Indiana, and Ohio.
2155. Discrimination against Arlington and Bainbridge by withdrawal of joint through rates.
2156. Unreasonable rates from Minneapolis to Barron, Wis., as compared with rates to other points.
2157. Early closing of freight depots in Cincinnati, Ohio.
2158. Discrimination in freight rates to New Richmond, Ohio.
2159. Unreasonable passenger fares from intermediate points to New Orleans, as compared with rates for the longer distance from St. Louis to New Orleans, La.
2160. Higher rate from New York to Marietta, Ga., than for the longer distance to Dalton and Chattanooga, Tenn.
2161. Unreasonable rates to Charlotte, N. C., from Western cities and from New York, Philadelphia, and Baltimore.
2162. Unreasonable commodity and class rates, Kansas City, Mo., to various points.
2163. Rates on barbed wire compared with rate on lumber from Vernon, Tex., to Gosnell, Okla.
2164. Unreasonable storage rates by Southeastern Car Service Association.
2165. Loss by freezing of shipment of greenhouse plants from Mount Pleasant, Iowa.
2166. Unjust advance in rates on shingles from Minnesota Transfer to Chicago and St. Louis.
2167. Higher rates on corn and oats from Aden, Bonaparte, Selma, and Farmington, Iowa, to St. Louis and East St. Louis than to Fairfield, Iowa.
2168. Routing of shipments from points in Mississippi.
2169. Classification of candies by classification committee.
2170. Unreasonable rates from Cincinnati, Ohio, and Chicago, Ill., to Norfolk, Va.
2171. Unreasonable rates on hay from points in Colorado to points in Texas.
2172. Refusal to name rates or furnish cars for shipments of lumber from Marked Tree, Ark.
2173. Wrongful routing of freight from San Antonio, Tex.
2174. Unreasonable rates to the Pacific coast from Mississippi River Valley, as compared with rates from Atlantic coast points.
2175. Minimum charge on small shipment from Kingfisher, Okla.
2176. Unreasonable passenger rates for race-horse man from New Orleans to Memphis and other points.
2177. Discrimination in rates on lubricating oils and turpentine, as compared with rates on linseed oils.
2178. Unjust competition in price of lime at Green Street, Wis.
2179. Excessive rate on car of lumber from Edenton, N. C., to Newark, N. J.
2180. Refusal of railroads to furnish cars for loading wood and ties.
2181. Unreasonable rates on tin plate, less than carloads, from Pittsburg to Wabasha and St. Paul, Minn.
2182. Unlawful withdrawal of rates without notice at Conden, Ala.
2183. Refusal to receive shipments by express companies from Unadilla, N. Y.
2184. Unreasonable minimum weight for all packages shipped from Nowata, Ind. T.
2185. Discrimination in rates between two shipments of scrap iron from Danielson, Conn.

2186. Change in routing of shipments from Cleveland to Bethel, Pa.
2187. Unreasonable rates on silk shipments from New York City, N. Y., to various points.
2188. Unreasonable rates on grain products and flour via lake and rail from Buffalo, N. Y.
2189. Excessive rates on coal from Ocean, Md., to Olney and East St. Louis, Ill.
2190. Higher rate on lumber from Little Rock to Springfield, Mo., than combination of locals.
2191. Discrimination against certain shippers of iced poultry from Keithsburg, Ill.
2192. Chattanooga long and short haul clause—decision in.
2193. Resolution Texas Millers' Association on rates from Texas.
2194. Overcharge on prepaid freight from New York to Punta Gorda, Fla.
2195. Routing of celery, carload lots, from Tecumseh, Mich.
2196. Rates on handles from Hope, Ark., to Albuquerque, N. Mex., as compared with rate from St. Louis to same point.
2197. Delay in interstate shipment from Maxton, N. C.
2198. Excessive rate on cotton piece goods from Augusta, Ga., to Cincinnati, Ohio, as compared with rate from same point to Chicago, Ill.
2199. Unreasonable rate on corn from Leroy to Louisville, Ky.
2200. Discrimination in terminal charges at Norfolk, Va.
2201. Minimum carload weight of corn shipped from Kansas City, Mo., to Ada, Ind. T.
2202. Excessive rates on car ice shipped to Mulberry Grove, Ill.
2203. Discrimination in rates from Ann Arbor, Mich., in favor of grain and against flour.
2204. Unreasonable rates by express companies from Madison, N. J.
2205. Overcharge on 1 horse shipped from Bunkie, La., to Mexia, Tex.
2206. Overcharges on shipments of furniture from the South to Maine points.
2207. Loss of shipment of roots between Kansas and Oklahoma.
2208. Classification of rural mail boxes from Adrian, Mich.
2209. Overcharge on 1 car mixed furniture shipped from Chicago, Ill., to Norfolk, Nebr.
2210. Excessive rates on carload oak lumber from Council Bluffs, Iowa, to Orient, Iowa.
2211. Unreasonable rates on grain from St. Louis and other points in Arkansas and Missouri.
2212. Forwarding of lottery tickets from points in Ohio.
2213. Inability of railroads to furnish cars for loading lumber shipments in Georgia.
2214. Excessive rates on lumber from Valdosta, Ga., to Johnson City and Bristol, Tenn.
2215. Rates on household goods from Geary, Okla., to San Francisco, Cal., higher than from Chicago to same point.
2216. Unreasonable rates on railroad ties from Bainbridge, Ohio.
2217. Unreasonable rates on lumber from Macon and other points South to Central City and Huntington, W. Va.
2218. Unreasonable rates to Dadeville, Sylacauga, and Alexander City, Ala., Monticello, Ga., and Laurel Hill, Lumberton, Maxton, and Warren, N. C.
2219. Overcharge on 2 cars of live stock shipped from Lancaster, S. C., to Atlanta, Ga.
2220. Discrimination in rates from Two Rivers, Wis., to Eastern points.
2221. Demurrage charges on a shipment of shingles at Cooperstown, N. Y.
2222. Unjust classification of iron pipes in cars with windmills from Dallas, Tex.
2223. Unreasonable ferry fare on a through ticket between Norfolk and Portsmouth, Va.
2224. Lack of shipping facilities at Avoca, Okla.
2225. Loss of package of hardware shipped to Albany, Oreg.
2226. Overcharge on 1 car fuel oil shipped from El Paso, Tex., to Deming, N. Mex.
2227. Overcharge in passenger fare from Washington, D. C., to Moseley, Va.
2228. Discrimination in rates on lumber and shingles from Pacific coast points.
2229. Discrimination against McCall in rates on sugar to St. Louis, Mo.
2230. Overcharge on shipment of 1 car of corn from Ringsted, Iowa, to Elsberry, Mo.
2231. Excessive through passenger rates from Janesville, Wis., to Boston, Mass., and the reverse.
2232. Lumber rates from Hattiesburg, Miss., to Wingo, Ky., as compared with rates from same point to Fulton and Paducah, Ky.
2233. Rates on scales from Elkhart, Ind., to Birmingham, Ala., as compared with rates on same commodity from Elkhart to Mobile, Ala.

2234. Excessive freight charges on shipment of chairs from Frankfort, Ky., to Cambridge, Ind.
2235. Excessive rates on small shipments of coffee and tea from Baltimore, Md., to points in Virginia.
2236. Unreasonable lumber rates from Donaldsville, Ga., to Petersburg, Ind.
2237. Excessive rates from Escanaba, Mich., to Chatham and Munising, Mich., as compared with rates from Chicago, Ill.
2238. Overcharge on 1 car lumber from Sharon, Tenn., to Frankfort, Ky.
2239. Unreasonable rates on cotton from Milledgeville, Ga., to Philadelphia, Pa.
2240. Claims arising through nondelivery of perishable freight shipped from Jacksonville, Fla.
2241. Unjust advance in rates on oak lumber, timber, logs, etc., in Virginia.
2242. Rates on cooperage, carloads, from Black Rock, Ark., to Odessa, Mo., as compared with rate to Higginsville, Mo.
2243. Overcharge on 12 cars oats, corn, etc., shipped from Memphis, Tenn., and Creighton, Nebr.
2244. Discrimination in rates on split peas from Port Huron to New York, as compared with rate on same from London, Ontario, and other points in Canada.
2245. Excessive charges on shipment of machinery from Texarkana, Ark., to Cape Girardeau, Mo.
2246. Rate on lumber and telegraph poles from Andover, Conn., to Boston, Mass., as compared with the rate on same commodities from Willimantic, Conn., to same point.
2247. Rate on hay from Rushville, Ohio, to Altoona, Pa., as compared with rate on same commodity from same point to Baltimore and Washington, D. C.
2248. Unreasonable rate on whisky and alcohol, carloads, from Omaha and Peoria to Des Moines, Iowa.
2249. Excessive charges on a case of notions returned from Shiner, Tex.
2250. Overcharge on three shipments of terra-cotta pipe from Terra Cotta, D. C., to Round Hill, Va.
2251. Excessive rates on ground oyster shells from Biloxi, Miss., to various points.
2252. Inability of railroads to furnish cars for shipments of corn from Afton, Ind. T.
2253. Discrimination in rates on railroad ties in Michigan.
2254. Discrimination in round-trip fare from Burlington to Denver and return, as compared with round-trip tickets from points in Kansas to same points.
2255. Excessive charges on baggage from Higgins, Tex., to Woodward, Okla.
2256. Refusal to receive iced poultry at Attica, Ind.
2257. Refusal to furnish cars for shipments of corn from Afton, Ind. T., to Texas.
2258. Overcharge on shipment of cattle horns from Chihuahua, Mexico, to Boston, Mass.
2259. Overcharge on a shipment of boiler, engine, and brick, carload, from Dubuque, Iowa, to Glen Haven, Wis.
2260. Refusal to deliver carloads of lumber consigned to themselves to other persons without bill of lading.
2261. Delay in shipments of dressed poultry and eggs to New York City.
2262. Overcharge on shipment of farm stock from Leroy, Minn., to Donnybrook, N. Dak.
2263. Adjustment of freight rates between California and Middle West and Southwest.
2264. Excessive rates on shipments from Albany and Troy, N. Y., to Whitehall, N. Y.
2265. Combination of railroads west of Chicago to change classification of liquor rate.
2266. Higher charge for shipments of rye, carloads, from Urania, Mich., to Cincinnati, Ohio, than from Kewanee and Manitowac, Mich.
2267. Unreasonable charges on shipments of books from Washington, D. C., to Louisiana.
2268. Inspection of corn at Cincinnati, Ohio.
2269. Discrimination in freight rates on nitrate of soda from New York City.
2270. Rates for shipments of flour from points in South Dakota to Chicago, Ill., as compared with rates from Minneapolis, Minn., to same place.
2271. Rates on eggs, carloads, from Austin, Minn., to Chicago, Ill., as compared with rate from St. Paul, Minn., to same point.
2272. Unreasonable passenger fares from New Hampshire to various points.
2273. Discrimination against Terre Haute in rates to Missouri River points.
2274. Refusal to put in switch to connect with side track in Cambria County, Pa.
2275. Discrimination in rates to Albany, Ga., as against Thomasville, Ga.
2276. Delays in shipments of freight from Columbia, S. C.
2277. School tickets between Greenland, N. H., and Newburyport, Mass.
2278. Excessive charge on shipment of oil machinery from Opelika, Ala.

2279. Unreasonable rate on grain from Missouri River points to Chicago, Ill.
2280. Overcharge on carload shipments of wheat from Camden, Ohio, to Radford, Va.
2281. Protest against official classification of rubber tires.
2282. Excessive rate on soap from Shreveport, La., to Philadelphia, Pa.
2283. Discrimination in grain rates from Winona, Minn., to Milwaukee and Chicago, as compared with rates from St. Paul to same points.
2284. Higher rate on furniture from Mount Airy to Martinsville, Va., than to Roanoke, va.
2285. Unreasonable rates from Grand Forks, N. Dak., to points in Montana.
2286. Discrimination in rates on wine from St. Louis to Pocahontas, Ark.
2287. Rates on cooperage stock from Hoxie, Ark., to McCall, La., as compared with the rates to New Orleans, La.
2288. Refusal to place switch for loading cars of milk at Preble, N. Y.
2289. Unreasonable rate by express companies on shipment of cigars from Delaware, Ohio, to Erie, Pa.
2290. Unreasonable rates on barley and other grain from Port Washington to Buffalo, N. Y.
2291. Excessive charges on shipments of household goods from Knightstown, Ind., to Alliance, Ohio.
2292. Unreasonable rates on carloads of lumber from points in Texas.
2293. Unreasonable rates on lumber from Dexter, Mo., to points south.
2294. Purchase of a railroad ticket to the wrong station from Buffalo, N. Y., to Bethlehem, Pa.
2295. Excessive charges on one car machinery shipped from Erie, Pa., to Stephenville, Tex.
2296. Discrimination in rates from Pacific coast and from Gulf ports to Topeka, Kans.
2297. Discrimination in rates from Shreveport, La., to Joaquin and Teneha, Tex., as compared with rates to Logansport, La.
2298. Advance in rates on lumber from Hertford, N. C., to Amenia and White Plains, N. Y., without due notice.
2299. Overcharge on a passenger ticket from New York City to Chicago, Ill.
2300. Rates on coal from South McAlester to Muscogee, as compared with rate on same commodity from same point to Kansas City, Mo.
2301. Unreasonable rate on coal from Rock Spring, Wyo., to Columbus, Nebr.
2302. Rates from Cincinnati, Ohio, to Springfield, Ill., higher than to Peoria, Ill.
2303. Rate on barbed wire and nails from Chicago, Ill., Joliet, Ill., etc., to Caldwell, Kans., as compared with rate on same commodities to Kingfisher, Okla.
2304. Unreasonable rates on shipments of coal from points in Indiana to Chicago, Ill., and Rensselaer, Ind.
2305. Improper classification of shipments of pickles from Salt Mine, La., to San Antonio, Tex.
2306. Discrimination in classification of bicycle hubs, etc.
2307. Demurrage charges in the freight yards at Pittsburg, Pa.
2308. Unreasonable rates on ties from points in Kentucky to Pittsburg, Pa.
2309. Rates on iron and steel articles as compared with rate on oil from St. Louis to Kansas City, Mo.
2310. Rates on grain and live stock from Ethel, Mo., to Chicago, Ill., compared with rates on same from Kansas City, Mo.
2311. Discrimination in milling in transit privilege at Hickory, N. C.
2312. Overcharge on one car lumber shipped from South Carolina to Pittsburg, Pa.
2313. Rates for shipments of wagons to points in the South—Toledo, Ohio, to Birmingham, Ala.
2314. Overcharge on two cars paraffin wax shipped from Rouseville, Pa., to Barberton, Ohio.
2315. Rates on wagons from Toledo, Ohio, to Albany, N. Y., are higher than on same articles from Albany, N. Y., to Toledo, Ohio.
2316. Overcharge on a car of sugar shipped from Dorceyville, La.
2317. Unreasonable rates on wool from Lena and Charleston, Ill., to Philadelphia, Pa.
2318. Excessive rates on grain products from St. Louis and Kansas City to Waskom, Tex.
2319. Protest against advance in rates on cotton-seed meal from Thomastown, Ga., to Boston, Mass.
2320. Rates on lumber from Alabama points to Ohio and Michigan points as compared with rates to Buffalo territory.
2321. Excessive rates on lumber from Pascola, Mo., to Cairo, Ill.

2322. Damage to shipment of household furniture from Telma, N. C., to Washington, D. C.
2323. Refusal to grant milling in transit privilege at Hogansville, Ga.
2324. Excessive charge on shipment five cars grain from Ireton and Harrden, Iowa, via Council Bluffs, to Kansas City, Mo.
2325. Damages on account of failure to deliver consignment of sales pads or tablets.
2326. Excessive rate on car of hay from Lennon, Mich., to New Orleans, La.
2327. Higher rate on traffic from the East to Rich Hill, Mo., than to Kansas City, Mo.
2328. Higher rate from the West to Bluefield, W. Va., than for the longer distance to Roanoke and other points in Virginia.
2329. Excessive rate on carload of junk from Winona, Minn., to Milwaukee, Wis.
2330. Discrimination in giving storehouse privileges in New York City.
2331. Excessive rates on cotton seed from Willow Shute and Benton, La., to Brownwood, Tex.
2332. Loss of box of tools from Chicago, Ill., to Jacksonville, Fla.
2333. Refusal to allow consignee to partially unload car in transit.
2334. Refusal to ship coal on account of its being loaded in cars of another company at Davenport, Iowa.
2335. Overcharge on shipment of shingles from Mobile, Ala., to Davy, W. Va.

APPENDIX D.

SAFETY APPLIANCES AND RAILROAD ACCIDENTS.

THE SAFETY-APPLIANCE LAW.

Report of the Chief Inspector to the Secretary.

Mr. Edward A. Moseley,
Secretary Interstate Commerce Commission, Washington, D. C.

Dear Sir: The first complete year of the operation of the safety-appliance law ended June 30, 1902, and the decrease in the number of railway employees killed and injured while coupling and uncoupling cars indicates clearly the wisdom of the adoption of the safety-appliance act. The improvements shown in cold figures are most impressive and need not be dwelt upon in this report. It will be of interest, however, to note the condition of equipment as indicated in the table of defects as reported by the inspectors for the Commission during the year ending June 30, 1902. In this period these men inspected 161,371 cars, finding 42,708 defective. This last number is 26.47 per cent of the whole, as compared with 19.73 per cent for the year ending June 30, 1901. For the year ending June 30, 1901, 14 per cent of all the defects discovered in cars were found to exist in the air-brake apparatus and connecting parts, whereas in the year now being reported 42.60 per cent are of this character. This large increase is doubtless due to the defects having been classified. The inspectors now work on a uniform basis, thus knowing exactly what to report. With this explanation we may note the items in detail in Class A, couplers and parts.

The first three items remain practically the same as in the year previous. Item No. 4, broken locking pin or block, shows a large increase. The locking pin or block is what may be called the vital feature of the coupler, and is analogous to the pin in the old link and pin coupler. On its integrity depends the usefulness of the whole coupling mechanism. The improvement of design and of material in this detail, which are found in the couplers of cars built during the past two or three years, indicates that the importance of the locking block is now appreciated. We may therefore hope for improvement in this item of the defect record.

Item No. 6 also indicates that more care should be observed in the renewal of locking pins. Careless or uninstructed repairmen are applying parts which do not work properly and thus increase the danger of operation.

Item No. 7 indicates that the old pins used with the link and pin drawbar are becoming very scarce, for it has been noted that the use of this pin forms the basis of this defect, and its disappearance accounts for the improvement shown.

Other items need no comment until we come to No. 11–5, split key missing from locking pin. This item includes split key missing from other parts, excepting knuckle pins. This defect still continues very common, indicating a lack of attention, for there can be no doubt that this is a matter which is susceptible of great improvement. While it is not in itself of a dangerous character, the absence of the key on very many occasions makes other derangements possible. A further indication of the trouble arising from the use of small parts in the coupler head, to which attention was called in my last report, is the increase in item No. 11–6, which it will be seen shows a very material increase.

Taking couplers and parts as a whole there were found 4,311 defects. This indicates an improvement, the proportion of defects found to the number of cars examined being 1 in 2.6, as compared with 1 in 2.4 last year.

The foregoing observations are based not only on the facts exhibited in the tables, but also on the comments made in the reports of inspectors J. W. Watson, George V. Martin, F. C. Smith, A. H. Hawley, R. R. Cullinane, W. R. Wright, H. K. Swasey, J. C. Sears, and J. E. Jones.

Inspector Watson says that many couplers require a second and in some cases a third impact to effect a coupling. He also calls attention to the fact that the Government inspectors should be required to report cracked, broken, and worn couplers, and that a suitable gauge should be provided for the purpose of determining defective conditions.

Inspector Martin is of the opinion that the rough handling complained of is not due to careless or reckless men, but to couplers of poor design. He thinks that the number of trains parting is decreasing, but when such cases do occur they are mostly due to worn couplers; and in this connection he notes that the railway companies' inspectors do not use the Master Car Builders' worn-coupler gauge. He further notes that the solid knuckle is coming into general use.

Inspector Smith is of the opinion that the conditions regarding the coupler situation are greatly improved.

Inspector Cullinane notes that the solid knuckle is coming into more general use.

Inspector Wright says, regarding couplers: "I find that there is not the required attention given them to insure safety at all times. In many cases knuckles are allowed to become badly worn."

He also makes special comment regarding the lack of attention given to knuckle locks.

Inspector Sears remarks on the number of knuckles badly worn, but is inclined to believe that more attention is given these matters now.

Inspector Jones makes mention of the need of a standard coupler, and also says that many of the couplers now in use require to be brought violently together in order to effect a coupling.

Many defects can not be discovered by inspecting cars at rest, coupled together in long trains; and inspections of moving cars, and of cars detached from other cars, which we do not make, would be necessary in order to show thoroughly the degree of care exercised by the railroad company. To illustrate this point clearly I append the result of an inspection of couplers which was made on the Chicago, Burlington and Quincy Railroad, and which appeared in a paper presented by Mr. R. D. Smith at the Western Railway Club in May, 1902. In connection with this I also present a résumé of a report of trains parting, which was prepared by the Nashville, Chattanooga and St. Louis Railway.

For the year ending November 30, 1901, the Chicago, Burlington and Quincy statement showed that 681 trains were reported as having parted on account of defective couplers. For the year ending December 31, 1901, the Nashville, Chattanooga and St. Louis Railway reported 834 cases of trains parting from all causes. With a view to making a comparison of the two reports I have taken the report of the Nashville, Chattanooga and St. Louis Railway, and have carefully noted all cases due to defects in couplers, which number 553. The Nashville, Chattanooga and St. Louis inspection does not go so minutely into defects of locks as that of the Chicago, Burlington and Quincy, but in the table the first five items have been combined so that a fair comparison can be made.

TABLE I.

Item No.	Defects.	Trains parted on C. B. and Q. R. R., year ending Nov. 30, 1901, by reason of defects in couplers.		Trains parted on N. C. and St. L. Ry. for year ending Dec. 31, 1901, by reason of defects in couplers.		N. C. and St. L. report extended to denote the location of failures in coupler bodies and knuckles.		
		Number.	Per cent.	Number.	Per cent.			
1	Lock pin defective	14						
2	Lock pin worn	3						
3	Lock block defective	11						
4	Lock block worn	15						
5	Lock block bolt bent	8						
		51	7.49	66	11.93			
6	Lock worked open	45	6.61	32	5.79			
7	Lock would not drop	1	.15					
8	Knuckle defective	210	30.85	206	37.25	Top lug broken	2	
						Bottom lug broken	2	
						Tail broken	51	
						Hub broken	7	
						Both lugs broken	1	
						Not stated	14	
						Pin hole broken	129	206
9	Knuckle worn	69	10.14					
10	Wrong knuckle	6	.88					
11	Pivot pin defective	33	4.83	16	2.89			
12	Coupler lugs broken	78	11.45	68	12.30	Top lug	64	
						Bottom lug	3	
						Both lugs	1	68
13	Coupler body broken	63	9.25	142	25.68	Shank	102	
						Head	40	142
14	Coupler body broken, location not stated.			10	1.81			
15	No visible defect	84	12.33	12	2.17			
16	Not specified	26	3.82					
17	Foreign substance under lock.	1	.15	1	.18			
18	Too much play	12	1.76					
19	Miscellaneous	2	.29					
		681	100	553	100			

Item No. 6, lock worked open, is one to which attention may properly be called, as it is surmised that defective uncoupling mechanism may possibly be one of the main factors in this defect.

Item No. 8, knuckle defective, is one of great importance. The investigation by the Chicago, Burlington and Quincy did not give the exact location of breakage of knuckles, but in the Nashville, Chattanooga and St. Louis inspection this information is noted and the 206 knuckle failures are distributed as follows: two broken in top lug, 2 in bottom lug, 51 in tail, 7 in hub, 1 in both lugs, 14 not stated, and 129 in the pin hole. The last item would seem to indicate that knuckles are allowed to wear until they become weakened at this point. The solid knuckle, the use of which is now becoming common, will, to a great extent, obviate this cause.

The Chicago, Burlington and Quincy shows 69 worn knuckles. The Nashville, Chattanooga and St. Louis shows none. In the case of the latter road it is assumed that this particular defect is included in item No. 8, knuckle defective. Item 14 may explain this apparent discrepancy.

Items Nos. 12, 13, and 14 show failures of coupler bodies. Of the 68 cases on the Nashville, Chattanooga and St. Louis reported as drawbar lugs broken 64 occurred in the top lug. This is no doubt due principally to knuckle pins breaking and the whole strain being thrown on the upper lug.

No. 13 shows the breakage in places other than the lugs; and of the 142 cases reported 102 are shown to have broken in the shank. This probably indicates in the cases examined a large number of couplers of bad design or workmanship.

Item No. 6, already alluded to, might be considered as belonging with Nos. 15, 16, 18, and 19. Much uncertainty as to the true cause of these defects is the predominant feature.

It is very evident that many of the railroads could, with advantage devote more time and care to the proper investigation of defects of couplers. The necessity for this is brought out in a striking way. In Table F in Accident Bulletin No. 4, issued by the Commission, it is shown that of the accidents caused by trains parting during the year ending June 30, 1902, a large share were reported as due to item No. 17, couplers parting, cause unknown. This item included 11 trainmen killed and 225 trainmen and 55 passengers injured, with an accompanying loss of $336,000.

The remaining cases reported on the Nashville, Chattanooga and St. Louis Railway number 281, and are due to failures of coupler attachments; and a table is presented herewith showing the percentage of failures in the various parts.

TABLE II.—TRAINS PARTED ON NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY YEAR ENDING DECEMBER 31, 1901, ACCOUNT OF DEFECTIVE COUPLER ATTACHMENTS.

Item No.	Cause.	Number.	Per cent.
	Couplers parted:		
1	Account loose carrier iron making chain too short	4	1.42
2	too low	6	2.13
3	too high	7	2.49
4	short uncoupling chain	9	3.20
5	passenger lifted lever	1	.36
6	Slip pin broken	68	24.20
7	Slip pin key broken	17	6.05
8	Slip pin key missing	24	8.54
9	Tail pin worn	5	1.78
10	Continuous rod key broken	43	15.30
11	Continuous rod key missing	7	2.49
12	Draft timbers pulled out	80	28.47
13	Coupling pin broken	1	.36
14	Yoke or bolts broken	8	2.85
15	Air hose burst	1	.36
		281	100

It will be noted that item No. 12, draft timbers pulled out, is one of the greatest importance. These failures are due principally, it is believed, to the use of the old, weak cars in connection with very much heavier and stronger ones, now so generally used. The next important item is No. 6, slip pin broken. This should be more properly described as tail pin broken. The large percentage of failures enforces the demand for the abandonment of this design.

The Master Car Builders' Association has sent out a notice through its committee on couplers, recommending the use of the solid knuckle. An investigation is to be made showing the results following the use of this knuckle, and it is anticipated

that the decrease in the number of knuckles broken will prove that the use of this type of knuckle will effect a marked improvement.

In a review of the proceedings of the Master Car Builders' Association made by Mr. J. W. Taylor, secretary of that association, before the Western Railway Club in October of this year, the method of reporting defects adopted by the Commission is recommended for general use throughout the country.

There is need of a worn-coupler gauge of simple and suitable design to be used by the railroad inspectors and also by the Government inspectors. The worn-coupler gauge now approved by the Master Car Builders' Association is not very largely used owing, it is believed, to the probability of its condemning many couplers at interchange points where it would be difficult to make renewals. If this is so, a simple gauge which would show the limits of wear in a general way might be gotten up to be used at interchange points, while the present standard could be used to advantage at repair points. The adoption by the Master Car Builders' Association of such a gauge would enable the Government inspectors to work in unison with the railroad companies. It would no doubt result in much benefit to the railroads, as the inspectors for the Commission would become expert in detecting couplers worn near to the danger line.

Defective uncoupling mechanism still remains one of the most serious problems in connection with the efficient operation of the Master Car Builders' type of couplers. A comparison of conditions as shown by the table discloses decided improvements in some features, and, I think, a general improvement as a whole in this class of defects.

Item No. 21 is the same as before.

Item No. 22, broken chain, shows some improvement.

Item No. 24, broken inner casting, shows an increase which is difficult to account for.

Item No. 25, bent uncoupling lever, also shows quite an increase, which may be due to many causes; but the form of rod now in general use is very susceptible to disarrangement, and some more suitable device is urgently needed.

Item No. 26, chain too short, shows an increase. This defect is an important one by reason of its relation to the causes of trains parting. Attention was called to this feature last year.

Item No. 27, chain too long, also shows a decided increase, which emphasizes the remarks made in relation to item No. 25.

The two following defects, items Nos. 28 and 29, each show improvement. Item No. 30 shows a slight increase. It is gratifying to note the improvement shown in item No. 32, uncoupling lever incorrectly applied. This is a defect to which inspectors of the Commission have paid special attention. No case is reported unless the rod is extremely difficult to operate. A few smaller parts, such as clevis pins, and clevis-pin split keys, show decided increases, which, I think, are due to the more thorough and effective examination of these smaller parts.

Taking the bare figures as they are given in the table, an improvement of 25 per cent in uncoupling mechanism is indicated. While this is not a precise percentage, owing to the very large increase in the number of defective air brakes and parts reported it is safe to say that better attention has been given to these important features than was given a year ago.

Inspector Martin observes that uncoupling chains are not promptly repaired and that uncoupling chains are broken by excessive slack in draft rigging; he also notes that many lag screws, which are used to secure the castings or brackets, become loose by reason of their being driven in.

Inspector Smith is of the opinion that the general condition of uncoupling devices is very much improved.

Inspector Hawley says: "I find little complaint from the yard men that uncoupling devices are not cared for, and there is generally a good word said for the way in which they are looked after."

Inspector Wright notes that proper care is not given to the uncoupling mechanism, and if the different parts are there, no matter how applied, the car is not considered defective by the railway companies' inspectors.

Inspector Swasey observes that in his opinion the uncoupling levers should be applied so that they could be operated from either side of the car.

Inspector Sears makes comment that the broken chains are the most common defect in regard to the uncoupling mechanism.

The foregoing quotations from the reports of the various inspectors are but brief extracts and their reports in full follow below.

In conclusion it should be said that the noneffectiveness of the uncoupling mechanism in relation to the general question of good coupler performance is one of extreme importance; for a coupler, good in itself, will suffer in its reputation if the uncoupling mechanism that goes with it is in any respect faulty.

Taking uncoupling mechanism as a whole, in which the number of defects found was 22,601, there is some improvement, the proportion of defectsfound to the number of cars examined being 1 in 7.1, as compared with 1 in 6.1 last year.

It will perhaps be pertinent to call attention to the fact that our inspectors report the great difficulty repairmen have in securing proper material for repairs to these devices. This accounts for the great diversity in methods and materials. The remedy is apparent.

In the matter of defects of visible parts of air brakes, very little comment is needed, as the principal items shown in this class speak for themselves. Eighty per cent of the defects are found in items 55, 56, and 56-1. It is probable that if the figures for the previous year had been on a similar scale as in this report improvement would be apparent. The obvious fact remains that an unlimited field for further improvement exists.

The use of the air-brake defect card has not yet become satisfactorily uniform. Attention may be called to defect No. 53, defect in retaining valve pipe. With a more common use of air brakes, it is extremely desirable that the retaining valve and its connections be maintained in pefect condition.

Inspector Watson makes special mention of a car leaving Chicago consigned to Portland, Me., which had a defective triple valve. This car made this trip and was part way home again before repairs were made. He also notes that too few air cars are used in trains, and that few yards have complete air-brake testing plants.

Inspector Martin is of the opinion that the situation in regard to air brakes is very much improved, but he notes that there are many men employed in cleaning air-brake apparatus who have not been sufficiently instructed. He also calls attention to the fact that the regulation of piston travel is generally neglected.

Inspector Smith calls attention to the fact that on many roads the brakemen have to test the trains just before their departure, and this necessarily means that the work is done hurriedly, and in many cases carelessly.

Inspector Hawley draws attention to the fact that many yardmen and trainmen continue to pull cars apart without first separating the hose. Comment was made on this feature in our last annual report. Inspector Hawley has paid especial attention to air-brake practice on the roads in the territory to which he has been assigned, and he reaches the conclusion that roads that have adopted the practice of using all-air trains are in a position to give better service than roads where the officers believe in the operation of partial air-braked trains only.

The general condition regarding cleaning of triples and cylinders he believes is much improved, but he suggests that the use of the air brake defect card should be more rigidly observed.

Inspector Cullinane notes that air brakes generally are in much better condition, but the air brake defect card is not used; that more testing plants are needed at terminals, and that release rods are given practically no attention whatever.

Inspector Wright draws attention to the numerous cases where cylinders are allowed to work loose, principally on account of the block on which they are secured drying out. This is followed by leaky air pipes.

Inspector Swasey also draws attention to the fact that the air brake defect card is not generally used. He also draws attention to an important feature, namely, the continued use of very dry and very old hose.

Inspector Jones notes that triple valves cleaned in the yards and replaced on cars immediately go into service without proper tests being made. This loose practice suggests that all triple valves should be taken into the shops, where efficient tests should be made.

While the situation in regard to the use of air brakes is greatly improved and it is noted that some railroads have issued orders that all air-brake cars must always be placed in the head of the train and operated, there remains a greater number of railroads who have not taken this progressive action. The requirements for the successful operation of air brakes are well known; effective cleaning and testing of triple valves, cleaning and oiling cylinders, tight train line, and ample storage capacity. With these requirements observed and the use of the 9½-inch pump (which will, under all reasonable conditions, supply all the air required) there is no reason why solid air-braked trains should not be operated in nearly all cases.

The inspectors have noted during the past year the number of air-brake cars in use per train on many railroads, and an examination of these reports indicates that perhaps one-third of the air-brake apparatus is not used. These conditions are more pronounced east of the Mississippi River. As the number of air-brake cars increases it may be expected that these conditions will improve, for with more air-brake cars the probability of having to make additional switching movements to get them together will be reduced. The enormous amount of traffic handled during the past

year and the overcrowding of yard facilities may, perhaps, explain, though it would not be right to say they excuse, the nonuse of air-brake cars.

It will be understood that the quotations which have been made from the reports of the inspectors both on the subject of air brakes and other topics touch only upon features which it was deemed desirable to mention in connection with particular recommendations. On the main features of their work, those which constitute the principal topics brought out by the analysis of the large table, the testimony of the inspectors is all alike. They are unanimous in their reports of conditions and in their recommendations, and it is on these reports that the foregoing general mention is based.

In closing it may be remarked that the railroads which have made the most progress with the power brake have demonstrated that it will do what is required of it if it is maintained in good condition. Occasionally it is stated that in some emergency the air brake has failed, but after investigation it is invariably found that the neglect of some one to do what he should have done is the true cause of the trouble.

Handholds.—Handholds as a whole show an improvement. The only increase noted in the defect record is in the item handholds missing. It is hoped that this increase is due to more efficient and complete inspection on the part of the inspectors for the Commission rather than to increased neglect. Mention may be made of the action of the Master Car Builders' Association through its committee on standards and recommended practices, who at the last convention of that association suggested a change in the location of handholds, and it is expected that material improvement will follow.

In the height of couplers the defect record shows a slight increase: the variations reported in heights are slight.

The defect loose carrier iron is one to which more attention has been given by inspectors during the past year, with the result that a large increase is noted.

Side sill steps.—In the first two items increases are noted, and it is believed that side sill steps are to quite a marked extent neglected by the ordinary car inspector and repairman. Their poor condition is not a bar to safe train movement, but their being secure and in proper condition is of the greatest importance to the trainman.

I alluded in my last report to the fact that we proposed to separate home and foreign cars. It was not practicable to get this system into operation before the 1st of last July, and that feature therefore will not appear until our next report.

"Local agreements" at railroad centers constitute a prolific cause of trouble. One company having a car consigned to an industry on some neighboring line will hand over the car to the company that is to make the delivery with the understanding that the receiving company is not responsible in any way for its condition. When our inspectors find cars under these conditions defective in regard to safety appliances, and report them, they are met with the explanation that this car is merely handled as an accommodation and that the receiving road is not responsible for its condition. This practice is having a bad effect and some radical action will be needed if it continues.

Much was said in the last annual report, and there were also many references in the letters of various railroad officials which were published in that report, regarding the rough handling of cars. While there is undoubtedly much of this, the past year's experience tends to confirm the belief that with many couplers the cars must be brought together very violently before coupling can be effected. This and the poor condition of the uncoupling mechanism is no doubt responsible for much of the difficulty complained of.

Respectfully,

GEO. GROOBEY.

REPORT OF INSPECTOR J. W. WATSON.

BUFFALO, N. Y., *September 18, 1902.*

Mr. EDWARD A. MOSELEY,
Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: In reply to yours of recent date in regard to existing conditions in reference to safety appliances, some of my personal observations are as follows:

I find that while very great improvements have been and are being made by the different railroad companies in keeping safety appliances in much better condition than formerly, many cars in actual service are very far from being in fair condition, leaving a vast amount of room for further improvements. At many points where inspection and repairs are supposed to be made, the railroad companies do not keep a sufficient number of repair men and a sufficient quantity of material on hand to make the necessary repairs. Cars are hurried through, inadequate time being given for thorough inspection and repairs. Inspectors are given time barely sufficient to look over the running gear.

When a car is found to be in unsafe condition to run, it is cut out and sent to the shop or cripple track for repairs. In such cases, as a general thing, repairs are made to the safety appliances at the same time repairs are made to the other parts. Cars with defective safety appliances or attachments are, in many cases, allowed to run while in condition dangerous to employees whose duties require them to handle such cars until the car is stopped for some so-called more serious defects.

While a great number of defects are being reported by the Government inspectors, I am satisfied that at least many of the more serious defects are not being reported. Thus, the actual condition of safety appliances is not being shown. Cars are usually coupled together when inspected, rendering it impossible for inspectors to examine the working parts of the coupling mechanism and note the defects. Only one end of one car on each end of a coupled train can be correctly examined, in addition to the few cars that may be found separated from others.

There are in use too many Master Car Builders' couplers that can hardly be classed as automatic. I allude to those that require too great impact in order to cause connection. So great in many cases is this, that cars and contents are badly damaged. I have repeatedly seen cars equipped with these imperfect couplers that required the second and third impact, each impact more violent than that which preceded it. These shocks start the draft rigging fastening, even force the nails from the sides of box cars, and cause clouds of dust to arise and fly from the car.

Couplers are used which at times require a heavy blow from a sledge or bar on the side of the drawhead to jar the coupler so that a coupling may be made after the cars have been crowded together. Much damage is caused to cars and their contents by using inferior and worn couplers. Railroad companies often improperly attribute such damage to the rough handling of cars by train and switching crews. * * * A light skeleton gauge should be furnished to inspectors with which to measure contour lines of couplers, and all defects in that line should be noted and reported.

With regard to the accident of railway employees falling from freight cars, I am convinced that one of the chief causes of such is the bad practice of connecting up air brakes with staff and brake wheel on either end of the car, one end working in the same direction with the air and the other end in the opposite direction. A brakeman in the act of applying the brake by hand on the end of the car working in a different direction from the air is likely to be injured, if not thrown from the car. Connections should be so applied that both brake wheels would work in the same direction as the air, or the one working in the opposite direction should be discarded.

A greater number of cars should be equipped with air brakes, and those that are so equipped should be kept in more serviceable condition. I find very few yards fitted with an air plant for testing air on cars, the test not being made until road locomotives are attached to the trains. Then, when cars are found defective, the air attachments are cut out and the cars are allowed to proceed, as at that late hour it would cause too much delay to make the necessary repairs. I noticed recently a private refrigerator car that had been carded at Chicago for defective tripple and which went to Portland, Me., and was on its way back and had not yet been repaired.

Too many freight trains are being made up and handled with too small a percentage of air-brake cars in serviceable condition, causing numbers of accidents to railroad employees and to trains by reason of the slack of the trains running in from the rear with such force when the air is applied as, in some cases, to throw men from the cars and break the train in two. When a train thus breaks in two with no air brakes in service on the rear portion, that part of the train is liable to run into the forward portion, causing a disastrous collision.

Respectfully, yours, J. W. WATSON, *Inspector.*

REPORT OF INSPECTOR GEORGE V. MARTIN.

SALT LAKE CITY, UTAH, *October 20, 1902.*

HON. EDWARD A. MOSELEY,
Secretary Interstate Commerce Commission, Washington, D. C.:

In reply to yours of recent date in regard to existing conditions in reference to safety appliances, some of my personal observations are as follows:

Couplers and uncoupling devices.—While the condition of the equipment in general is improving, yet, in my opinion, a much better state of affairs should now exist.

The uncoupling devices at the present time are not receiving the care they should have.

On nearly every road I find that although the traffic has increased very much, yet the force of car repairers and inspectors has not increased proportionately, and many yards are congested with bad-order cars waiting to be repaired.

In some places I find that inspection, except for broken or loose wheels or disabled

trucks, has been entirely abandoned. I have in mind one division terminal on a large trunk line where two years ago they maintained two inspectors and two light-repair men in the yard day and night. They now have no inspector at all during the day and only one man at night, who only inspects trains. The practice at this particular point at this time is as follows: When a freight train arrives two men leave the repair track and look over the train. If a car is found with sufficient or heavy defects the car is carded "bad order" and goes to the repair track. No note is taken of uncoupling devices or grab irons or condition of air. Neither is an inspection of tops of cars made. This same practice is followed when a train is about to leave, unless these trains arrive or depart during the time a passenger train is due, when the freight trains receive no attention at all. This yard handles on an average of 8,000 to 10,000 cars a month.

I have found places where car inspectors have been removed from passenger-train inspection entirely and the responsibility of inspection put upon the trainmen. Now, this is probably done to curtail expenses in the car department. I have in mind one particular division where this particular practice is in vogue. The company's general shops are located at this point. No less than ten passenger trains pass through this station a day, to all of which cars are here added, and, in fact, considerable switching is done to some of them; yet, although freight-car inspectors may be standing close by, the brakemen are expected to inspect these trains and couple up the air and steam hose and safety chains, regardless of the fact that they are expected to assist passengers at coach steps. The result is that trains get no inspection. Then, if anything happens to cars, such as getting flat wheels from the brake being adjusted too tight, brakemen are either severely disciplined or discharged.

While the question of broken uncoupling chains has been given considerable attention by the railroads, yet it has not been along intelligent lines. Strict instructions have been issued by the officers of all railroads to their respective car forces to keep the uncoupling devices in safe operative condition, yet, on many roads, when a car foreman makes requisition for material it is often impossible to secure material without waiting from fifteen to thirty days. I understand that this delay is due to the fact that strict instructions are out on nearly all railroads to keep down storehouse stock to the very lowest possible point. The result is that when material can not be promptly secured the men will either allow cars to go defective or will use improper material to make necessary repairs. For instance, I find many broken uncoupling chains whose broken ends are tied together with pieces of wire and not infrequently with pieces of rope. This practice was, for a long time, charged up to the trainmen, but, after careful investigation, I found that it was being done by the carmen and that, too, in many instances on the repair track.

The practice of not changing uncoupling devices, so as to conform to new coupler when couplers are changed for any reason, does not seem to decrease in any degree.

Many roads have no attachments for couplers that are not standard to their road; therefore when a foreign car is placed upon the repair track and has a new coupler put in, no effort is made, as a rule, to put on the proper uncoupling device, or to so change the uncoupling device so as to make it operative.

Many uncoupling chains are still found that are too long. This is due to careless application by repairmen, and is also due to the fact that the coupler may have too much slack. Many couplers have too much slack, for the reason that they contain springs that are too small for the pockets. Again, coupler springs that have been removed from cars for being compressed, are, by some roads, heated and stretched and again used. I find that springs so treated very quickly become compressed to even a greater degree than before, therefore it is a difficult matter to properly adjust uncoupling chains on such cars, and the certain result is a chain too long.

I do not find as many short chains as formerly. The few such that I do find are usually the result of the use of S hooks and split links. These links and hooks are applied open and are then closed up by hammering them together. As it is impossible for the workmen to properly adjust the length, the result is that the chain is either kinked or the hooks or links have been closed too tight, making the chain too short.

Many uncoupling-lever brackets are still found to be loose. On all such I find that the looseness of the brackets is due to the fact that they were secured by lag or wood screws, and that these lag screws have been driven into the wood instead of being screwed in. Many roads only use one bolt to secure the inner keeper. This is invariably found to be loose or broken. Many wrong brackets are found on account of lack of the proper material.

Many bent uncoupling levers are still found. These levers are frequently bent by being struck by material that is loaded on flat cars and has slid forward, while many

levers on freight cars are bent by coming in contact with buffer plates on platforms of passenger equipment, either by being hauled in trains or while switching in the yards, and some are bent by goose necks or Dolly Vardens on engines.

I frequently find uncoupling levers improperly applied, some being applied between the brake staff and retaining-valve pipe and binding so tightly that it is almost impossible to raise the lever, much less shift it to lock position.

Many broken couplers are found, and in most cases the breakage appears in the lugs, as a rule in the upper lug. This is caused by broken knuckle pins, which are frequent, but very little attention being paid to knuckle pins. Some knuckle pins are broken by being sheared off on account of their being too small. It is not uncommon to find bolts and coupling pins substituted for knuckle pins.

Many knuckle pins are found bent, which makes the operation of the knuckle difficult. This, too, is another result of the necessity of hard striking of cars to make them couple. Broken knuckles, caused by being badly worn and thereby weakened, and many that are broken owing to weakness from having been cored out, are still found.

The link slot and pin hole is a prolific cause of broken knuckles. The impossibility of securing the right material is a reason assigned by many car men for the use of wrong lock pins and blocks. The great trouble, however, is the many different types of master car builder couplers and the many different styles of draft rigging. Railroads make no effort to keep repair parts for the many couplers in use. This acts as an inducement to car inspectors not to discover any defects in foreign couplers that can possibly be avoided.

Equipment can not improve under those conditions. While it is a fact that a great many couplers, inferior both in design and construction, are still in use, yet it is a fact that the coupler question seems to be evolving itself into a survival of the fittest. The most noticeable feature that I have observed in connection with couplers during the past year is the great number of roads that are adopting the knuckle-kicking coupler. This is also true of the solid knuckle, which is rapidly coming into more general use. I believe that it is only a question of a short time until all the railroads will adopt the knuckle-kicking coupler, the better to insure absolute safety to their employees. Men still continue to run in front of approaching cars to open the knuckle by hand on the other types of couplers.

The question of economy in terminal switching as a result of the adoption of the automatic coupler is one that I can not treat in an intelligent manner, but one needs no figures to convince himself that the coupler is a factor in terminal work that can not now be dispensed with.

I observe that many officials claim that, since the adoption of the coupler, a new source of expense has appeared, viz, the damage to freight and equipment due to rough handling of cars while switching. The claim is set forth that as men no longer are required to go between the cars, they are no longer as careful in cutting off and kicking cars as they formerly were. This idea is absurd, as any person who has had practical experience in switching cars well knows. There are many good reasons why cars are handled roughly, and one of the principal reasons is that there are many couplers which can not be made to unite one with the other without striking them extremely hard. Then, if freight has not been stored properly in cars, which in many instances is the case, damage follows. If a "shank gauge" were applied to all couplers that have been removed, a state of affairs would be revealed that would suffice to change some ideas that exist to-day in regard to the rough handling of cars. Another cause of damage to freight is the running of semiair-braked trains now operated on numerous roads.

The parting of trains on line of road is on the decrease. The majority of break-in-twos caused by the coupler can be traced to neglect of the care of the coupler. Strictly speaking, they are generally due to badly worn lock pins, or blocks, or missing parts of the internal mechanism which allow lock pins or lock blocks to creep or become displaced, thereby allowing the knuckles to open.

The master car builder limit gauge is an instrument that is practically unknown among car men. The common practice among car men to determine whether a knuckle is worn beyond the limit is to determine it by the eye, while some few use a rule.

Hand holds and ladders.—Very few cars are now found that are not sufficiently equipped with hand holds or grab irons, the only trouble being the lack of uniformity of application, this appliance being found fastened in all sorts of positions. The roof hand hold should in every instance be placed in the same position with relation to the ladder on the car. This is not always done and, as a result, many accidents to train men have resulted. At night, a train man groping his way over a fast-running train, perhaps with his light extinguished, comes to the end of a box car, down which

he is obliged to climb to a flat car. He finds by feeling, it being too dark to see, and perhaps smoke and cinders beating into his face, a roof hand hold set lengthwise of the car. The position of that hand hold leads him to believe that the car is equipped with a side ladder, when in reality it is equipped with an end ladder. The result is that he goes over the side of the car to the ground, receiving serious injuries or possibly being killed. The same is true of hand holds set crosswise of the cars that are equipped with side ladders.

More defective end ladders are found than side ladders. This is due to the shifting of lumber, or other long material, on flat cars or steel structural material loaded in gondolas and extending out from 2 to 3 feet over the end of the car.

Running boards.—Very little trouble is experienced now with defective running boards.

Side sill steps.—Many defective side sill steps are still found, particularly loose and bent ones. A railroad inspector seldom tries a side sill step to see if it is loose or otherwise defective.

Standard height of couplers.—A very satisfactory condition in height of couplers exists, it being very seldom now that one is found out of the limit.

Air brakes.—Improved conditions in air-brake matters are apparent, yet the progress is not as rapid as it should be. Many cleaning and testing plants are in course of erection or under consideration. Many different methods of cleaning and testing are also in vogue, but the practice of cleaning triples under the car seems to be the favorite, as it is the one most generally pursued. Carelessness and ignorance in the cleaning of triples are still apparent to a large degree.

Many roads have adopted the practice of cleaning all triples at a given point and sending out clean triples to the various car inspection or repair points in exchange for dirty ones. This method is not satisfactory and soon falls into disuse, because it takes too long to get the clean triples, thereby delaying cars.

Owing to the fact that so few roads have adopted a standard practice for the care of air brakes, I find that at many shops the mechanical officer in charge, or his air-brakeman, has set up a testing plant of his own design, and many of them do all their own repair work and make their own leather and rubber gaskets; and while the system of each is entirely different from that recommended by the Airbrake Association, each invariably contends that his is the better method, and it is seldom that one is willing to admit that the work done on triples by other roads is thorough.

Remarkable progress has been made toward getting triples cleaned within the time limit. Several roads have adopted the plan of cleaning all freight triples on their own cars once every six months, and many roads will not allow cars to run over their line unless the triples have been cleaned within the twelve months preceding.

I find many yards that have been piped for air-brake testing purposes during the past year, but this work, in many instances, is the result of zealous efforts on the part of some car foreman, who informs me that he has been obliged to gather up the pipe for the purpose from numerous sources and put it down piece by piece and that the officers of the division were not aware that such a plant existed.

Lots of trouble exists from air brakes that are cut out and not carded. The cutting out of cars on line of road is often done in long trains where the engine has a small pump and small reservoir, and conductors or trainmen often cut out defective air cars and neglect to card them. Many inspectors, when they find a car cut out and not carded, cut it back in and pay no further attention to it, while many pay no attention to it whether it is carded or not.

Some few roads have adopted the practice of testing the pressure retainer on all outgoing trains, while many roads are constructing cars and equipping them without a pressure retainer.

The matter of equalization of brakes on freight cars has been given but slight attention. It is a common sight to see the piston travel under a freight train vary from 4½ to 12 inches. I have found in trains many cars of which the piston was out against the cylinder head, and the shoes were not tight to the wheels then. This is true with many passenger trains also, though as a rule the travel is not so great.

Some experiments are now being made with automatic slack adjusters on freight cars, and it is to be hoped that the experiments will prove successful, and that an automatic slack adjuster will be applied to all air-braked cars, as the requirements of the service demand it.

Air hose.—The failure to uncouple air hose by hand previous to switching a train is a practice that is proving disastrous to the hose and its connections. The stretching of the hose tears the rubber and ruptures the web so that it becomes soggy and leaks and frequently under high pressure bursts, often at a time when a train is under high speed. Such an occurrence is often attended with heavy loss through damage to cars, especially in trains only partially air braked.

The practice is in vogue on some roads of requiring the inspector to uncouple all hose on the train. This is done while the train is under protection of a blue flag, and is a good practice. These same roads require the inspector to couple up all hose on departing trains.

Regardless of the claims of many railroad officials that small-capacity cars are always placed on the rear end of trains, the fact is that absolutely no attention is paid to where they go in a train. I find many trains made up of 50 or 60 cars of which fully one-third are small-capacity cars, while the balance of the train is made up of 80,000 and 100,000 capacity cars. These small-capacity cars are scattered all through the train indiscriminately.

I know of accidents caused by the breaking down of small-capacity cars heavily loaded and placed in the middle of a long freight train, and upon investigation it has been claimed by the officials that the damage which resulted from such breakdown was due to a sectional collision, and the officials have censured and in some instances discharged some or all of the train crew.

The practice of double heading is very severe on equipment and very few double-header trains pass over a division without a great many break-in-twos, which usually result in broken knuckles or couplers and not infrequently the pulling out of the entire end of the car.

I frequently find that heavy trains are being held down steep grades by the help of hand brakes. On making inquiry of the officer in charge of that particular division, I am told that the air brake will not hold the train. Then it is claimed that the hand brakes are only used to hold trains made up largely or in whole of 100,000-capacity cars, it being claimed that the percentage of braking power on these cars is so greatly reduced under a load that the holding power is practically lost, hence the necessity of the use of the hand brakes. While on other roads, and in some instances on other divisions of the same road, I have found entire trains of 100,000-capacity cars loaded being let down long grades averaging 2.5 per cent with the help of the air-brake retainer, and no hand brakes being used at all. Some division officers, while admitting that the air brake will do the work and hold the trains at all points, still compel the trainmen to get out and set hand brakes. This, they say, they do so as to be sure that the trainmen will be out on top of the train while descending all grades. This is surely a poor practice and is not at all progressive, nor are good results obtainable from it. One place I have found where a railroad company operating on heavy grades requires the trainmen to set hand brakes on the head end of all freight trains. This, it is claimed, is to enable the engineer to control the train, but employees on this road tell me that it frequently occurs that they are compelled to club up every hand brake on the train; and as many of this company's cars are equipped with double-end hand brakes it often happens that when the hand brakes that work opposite to the air brake are set, the first application of air breaks the brake connections, thereby disabling the brake on that car, and if the air happens to be applied at the moment the trainman is setting one of these oppposite hand brakes it will invariably throw him from the top of the car. Many trains, however, are let down these same grades without the use of hand brakes.

Curves.—Many curved tracks that are now in use where cars are handled in and out of same by use of pins and links or coupling bars will probably never be changed, and a suitable device other than pins or links or coupling bars will have to be brought into use. Further construction of curved tracks, however, can be stopped. If the railroad company along whose tracks a manufacturing or other industrial plant contemplates building a track into their place of business will require these people to first submit to the chief engineer of the railroad a ground plan of their plant for the proposed location of their tracks, that official can inform the constructors whether their curves are too sharp or not.

Recommendations.—Secure for Government inspectors "freight train permits" from all railroad companies, which will enable inspectors to ride on any freight train, the better to observe practices along the line of road.

Have air cleaning and testing plants installed at all points where triple valves are cleaned, and all yards where trains are made up piped, so that trains can be charged and their brakes made operative before road engines are put on trains. This work should be separated from the car or motive-power departments and made a separate and distinct department, in charge of competent officers. Air inspectors should test brakes on all trains.

More car inspectors and repair men should be employed, and the railroads should adopt some method of raising the standard of efficiency among this class of workmen. Main reservoirs on locomotives should be increased in size to not less than 56,000 cubic inches of air space.

There should be more general use of the worn coupler gauge.

The adoption of the solid knuckle should be compulsory and knuckles should not be cored out.

A standard under framing of cars should be adopted and such framing should be of metal.

The equipping of all cars with air brakes should be compulsory

The practice of compelling trainmen to ride out on tops of trains should be taken up with railroad officials with a view to stopping it, it often being done by petty officials simply to persecute the men, thereby compelling them to take unnecessary risks.

The practice of hauling standard and narrow gauge cars in one train should be stopped.

All railroads should adopt one type of coupler; that is to say, have couplers uniform not only as to coupling contour lines, but also in the principal details; as, for example, in the knuckle opening feature.

Respectfully submitted.

GEO. V. MARTIN, *Inspector.*

REPORT OF INSPECTOR F. C. SMITH.

PHILADELPHIA, PA., *September 9, 1902.*

EDWARD A. MOSELEY, Esq.,
Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: The existing conditions with reference to safety appliances are vastly improved as compared with last year in the section of country to which I have been assigned during the past year. I find that the roads, with some exceptions, have made many improvements in this direction. A coupler too high or too low is now almost unheard of, and couplers and knuckles are so closely watched that a break in two from worn couplers or knuckles is of rare occurrence. Not so many uncoupling chains are found broken, not so many lock and lever castings missing, not so many triple valves and cylinders with old dating, and not so many grab irons and sill steps missing; and the roads generally are using more air brakes on their trains than last year, some of the roads making it a point to switch all cars equipped with air brakes together, so that the air brakes can all be operated. The most of the roads following this practice have established air plants in their yards at division terminals, and when a train is made up the brakes are tested with an application from this air plant by inspectors who not only test the brakes, but also adjust the piston travel.

Some of the roads have not as yet established air plants, but they are particular to have their air-brake inspectors test the air after the engine is coupled to the train. The inspectors are required to adjust the piston travel and when through to report to the engineer how many cars of air he has and the number of cars that are working. There are some roads that have neither air plants in their train yards nor air-brake inspectors, and the duty of testing the air brakes on such roads falls upon the brakeman, and all these as a rule will make a test of the brakes for their own protection, if for no other reason. However, it is too often the case that they are hurried out of the yard by the yard master and not permitted to make any test whatever and do not know whether the air is working or not. So long as a practice of this kind is followed we can not reasonably expect to get good service from the air brakes.

A great number of air hose are torn off and otherwise injured by separating cars without first disconnecting the hose, particularly when the train line is charged, and I am sorry to say the brakemen are largely at fault in this matter. I have watched them repeatedly at stations where they had cars to throw off, and they would simply turn the angle cock and let the hose take care of itself, and if a hose should get torn so as to cause it to leak they would throw it away and take one off another car or change the hose for one off a car that they were leaving. When the air on the latter car is again put into service, a defective hose is found. So every day cars in transit can be seen with hose missing from them. I have counted five missing from cars in one train on some of the roads.

The trainmen are exposed to great danger by hose bursting or by a sudden application of the air, and upon roads where long trains are hauled and the air operated on only a few cars the danger is very great. The brakemen on many such trains as these are required to assist the engineer to control the train, and they are in constant fear of their lives because of the terrible shocks to the rear end of the train in the event of a hose bursting or of an emergency application by the engineer. Now, if the brakes are in proper shape, there is no excuse for an engineer to handle a train in any such way. In regard to the hose bursting, it is a well-known fact that after a time the hose becomes porous, and just the moment it does that moment it becomes

an element of danger and should be removed. I believe hose ought to be more often subjected to a test for this defect.

The most numerous defects at present are end locks improperly applied and of wrong dimensions, bent uncoupling levers, bent grab irons on the ends of cars, and bent ladder rounds. The defective lock brackets, or end locks, and uncoupling levers are an element of danger to men on local trains and to yard crews, who, on account of the great amount of business handled by the roads, are required to do their work hurriedly. To those crews who may happen to work on an incline, these defects are not of so serious a nature, but to those who may have to work against an incline or on level tracks they are serious. Indeed, for instance, if switching on an incline, all that is necessary is to lift locking pin and let the car or cars go, but if switching against an incline or on the level, it becomes necessary to give the cars a kick, and often a hard one. The man who does the cutting goes to make a cut and finds the lever bent so he can not lock the pin in an uncoupled position, or finds the lock bracket applied so it will not engage the lever, or it may be bent so it will not engage the lever, or instead of a lock bracket there is an ordinary end casting such as is used in connection with couplers having lock pins which automatically lock themselves in an uncoupled position when pin is lifted. Under such conditions there is but one thing for him to do, he can not run and hold the lever up, so he swings himself on to the car, and, if one of the switchmen is not in sight to give the engineer the signal for him, he is obliged to hang on to the car with one hand, hold the lever up with one foot, and give the signal with his disengaged hand. These instances have become so numerous that cutting cars now is harder work than when link and pin couplers were in use, and about as dangerous; and if the cars were not so well-equipped with grab irons the work could not be done near so quickly as at present.

I have heard quite a number of railroad officials remark that as all cars are now equipped with automatic couplers, they can not see why grab irons are so essential on the ends of cars. If they were required to switch cars for a few days they would find out. These defects are easily traced to car repairers and to the repair shops, and are the results of wrong repairs, and I believe that the repair shops where the piecework system prevails are responsible for more of these wrong repairs than are the shops that pay their men by the day. It would seem that a remedy in such cases as these would be easy. It is certainly as much the fault of the foreman who permits such work to leave the shop as it is of the man who does the work, and if the foreman will not stop such work, an inspector might do some good by spending a little time watching the cars that are turned out of the large repair shops and yards.

The cause of so many bent levers, end locks, grab irons, and ladder rounds on the ends of cars is rough handling by switchmen, and is caused by cornering the cars. For instance, a car is kicked into a siding and it does not run in to clear, and other cars are given a kick into the next siding, and the corners come together with a crash. It seems to me that in many places the yard masters wink at such work. Only a short time ago, in a space of fifteen minutes, I saw cars cornered five times, and four of the instances resulted in damage to the safety appliances. This is a very bad practice and should not be permitted. Broken chains will continue to be somewhat in evidence just so long as couplers are used which require lock brackets, for it is a noticeable fact that the broken chains are mostly found on couplers of this type, and the cause is as follows: While the car is standing still the chain is adjusted to just the proper length to lift the pin and at the same time permit lever to engage lock bracket and hold the pin in just that position, but when that car is subjected to a heavy strain in some of the long trains, the coupler pulls out so far that either the chain breaks or it uncouples the car, and in the latter event the trainmen are sure to disconnect the chain to prevent it from uncoupling again. This is particularly true of cars having the American continuous-draft rigging.

I also desire to make a few comments upon the couplers whose makers claim for them a locking pin which, when lifted automatically, locks itself in an uncoupled position. There are couplers which will do all that is claimed for them in this respect and there are others which will not. For instance, while the car is standing still the pin can be lifted or pulled, as the railroad men say, and it stays in that position, but when the car is in a train and in motion it will jar down, and the only way to keep it up when a cut is to be made is to hold it up. And this complaint is so general that it has tended to discourage trainmen from trusting even those couplers which will perform this particular feature. To the young, inexperienced man who may be just starting into railroad work this is not a good example, and he will naturally fall into the same way of doing work, and it is a fact that there are a good many just such men who do not know the difference between a coupler with automatic attachment for holding pin up and one that requires a lock bracket, which tends to expose these men to danger that could otherwise be avoided.

It has become the practice to clean triple valves in many places where they have no way of testing them after the valves have been cleaned and put back in position. This, I believe, is a mistake and results in more harm than good.

I desire, also, to refer to the manner in which old, weak, low capacity cars are hauled in long, heavy trains. For a time after the advent of steel cars all high-capacity cars were hauled on head end of train and all the old low cars on the rear end; and that rule is still being followed by some of the roads. But of late I have seen a great many long, heavy trains with from 8 to 16 steel gondolas ahead, then one or more old low cars, and then fifteen or perhaps thirty steel cars behind these. Every time that an application of the air is made in such a train the chance for an accident is very great, and nearly every day a wreck is caused in just this way.

Respectfully, yours,

F. C. SMITH, *Inspector.*

REPORT OF INSPECTOR A. H. HAWLEY.

HANNIBAL, MO., *October 30, 1902.*

EDWARD A. MOSELEY, Esq.,
Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: I believe if the men holding high positions with the railroad companies could afford to spend a number of days watching the actual handling of cars and the use of the air equipment on freight trains, they would have no hesitancy in saying that the advantages accruing from the application of such appliances as are provided for by the safety-appliance law have more than compensated for the money expended in applying them.

I have had the opportunity to visit during the past year some of the places visited the year previous, and it affords me pleasure to say that at some of these places special efforts appear to have been made on the part of those in charge to pay strict attention to the minor defects. When such efforts have been put forth, I have seen the result in better conditions. On some lines I have had quite lengthy talks with the men who actually do the work, and they were almost a unit in saying that the work is receiving closer attention at all points, and therefore better conditions are bound to exist.

Conditions in the territory over which I have traveled are a good deal better in some places. In others they are not quite so good as they were the year previous; but, taking it as a whole, I believe there is an improvement. I do not mean to convey the idea that there is not much room for improvement, for such is not the case. Many improvements can be made all along the line.

It is the custom, in many places where there is an exchange of cars, for one road to deliver a car to the other road to be loaded or unloaded. This car has a defect of some kind, such as an inoperative lever, broken chain, hand brake not working, ladder round, or hand hold bent, or broken, etc. This car will in time be returned to the delivering road. The car is switched by both roads in this condition. The men are compelled to handle such car and take the chance of being injured in some way. The receiving road does not repair it on account of its going right back to the delivering road. In many cases these cars are not returned until a train is made up, when they want the car to go in that train, and away it goes. If the repair man wants to repair the car he is told they can not hold it, and if he does hold it and consequently delays the train, word comes to him from the office to explain why he held it.

It is an easy matter to see what may result if the car is allowed to go, but seven out of ten times it goes, and it keeps going on to its destination without being repaired, for no one will take the responsibility of holding it long enough to repair it if it is safe to run. The same conditions in regard to transfer may be in effect at the other end and the car is again switched in its defective condition. This is one of the many things that it seems to me ought to be remedied. One or the other of the transferring companies should see that the car is repaired. This can be done while it is being loaded or unloaded.

Some bad defects in air equipment are brought about by the neglect of switching and train men to separate the air hose and allowing it to be pulled apart, which at times loosens the joints and pipes. This is a custom with some, and should be discouraged.

It is claimed in some places that it is not necessaay to have all the air in the train in use, as the train can be handled just as well with a part of the air; in other places it is claimed that to use all the air is more of a hindrance than a benefit in the handli ng of the train; in other words, that the getting of trains over the road is better accomplished with only enough of the air coupled up to handle the train. I have watched the handling of trains, and have secured passage on some in both conditions, and it has been demonstrated very clearly to me that there is better service, quicker

dispatch of trains, etc., on the lines where they use all air. It is not an uncommon occurrence to see a 70-car train all air and all working. It seems that the idea of using all air possible is being taken up by more than one railway official. Two roads that I know of during the past year have issued bulletins to have all air switched ahead in making up trains and to use all air that is operative.

I believe that air brakes have received more attention during the past year than during the previous one. In comparing the reports of cars inspected by myself in two years, I find the percentage of cars cut out is less the past year, and the percentage of cars cut out and having a defect card is greater to a considerable extent. As the air brake defect card is becoming more generally used, the braking facilities are getting better. With the continued use of the card the time will come when it will be a rare thing to find a car with a defective brake that is not labeled with a defect card. When that time comes there will be no excuse for the men in charge of the car department not seeing that the proper repairs are made and the brakes made fully operative. Very little attention is given by car inspectors to cars cut out unless they have defect cards to designate the trouble. I can only repeat what I said a year ago, that a rigid rule should require all conductors and trainmen to place air brake defect cards on all cars found inoperative in trains under their charge. I find that when this rule is enforced the air equipment is in the best condition.

I find very little force provided to do the work at some places where there are a large number of cars, and this results in permitting cars to be moved with defective safety appliances, and to go on the road in this condition.

One remedy for many of the defects to couplers and their uncoupling devices, as well as for the condition of handholds and ladders, would be to have a man at each principal point whose first duty should be to make an inspection of and repair such defects. In places where they have one or more men whose duties are as outlined above, and who carry with them a supply of clevises, split keys, etc., I find very little complaint from the yard men that uncoupling devices are not cared for.

There are places at which anyone who is familiar with conditions in and around railroad yards can readily see that more help is needed. From talks had with those who have jurisdiction at these places, it seems that they realize that more help is needed, but for some reason it is not furnished. The foreman asks for more help, and he is told to write a letter stating the conditions. He does this, and in due time the master mechanic or the general foreman, the person to whom application was made, comes around. The foreman asks for more help again, and is again told to write a letter; but the second letter, like the first, brings no relief. Many times the same rule applies to requests for supplies. I have been in places, both small and large points, where they had not had an air hose for a week, and they had been without other supplies for longer periods.

Lack of facilities for testing air at terminals in some cases does not permit of proper care. The failure to test air when the opportunity is given before leaving with the train also has a retarding effect on efficiency. No one will deny that to have a train made up and tested with an air plant in the yard gives the best result. If the instructions of these companies whose rule requires that a train must be tested after the engine is coupled on and has the train pumped up to required pressure were to be carried out—in yards where they have an air plant as well as where they have not—by the train crew or inspector, or both, there would be less cause for complaint about poor brakes.

I believe it is the intention of nearly all train crews when this rule is in effect to follow it, but there are times when it is hardly possible for them to do so. The train is late in being made up and as soon as the engine is coupled on the yardmaster says: "Get out of town." The conductor, at times, takes this order, gives the high sign, and away they go. Of course, if anything happens the conductor is held responsible for not testing the train, but he assumes that risk, for, on many occasions, if he insisted on testing the train, in a day or two he would get a letter from his superior wanting to know why he held the train. Day after day risks without number are taken by men in the train service, but they are taken with a view to expedite the business of the company, and I believe that in many cases the men are appreciated for so doing by the officers of the company.

Notwithstanding the conditions surrounding the matters referred to, I believe if every train before leaving a terminal had the air tested as is required by the rules of the company the end would justify the means. The engineer in charge, knowing the brakes had been tested, would have no lack of confidence; and the secret of success in railroading being "Be sure you're right, then go ahead," the train would reach its destination on time.

In my travels I have been received in a most cordial manner by all of the railway officials whose acquaintance I have had the pleasure of making, from the general

superintendent, superintendent of motive power, and superintendent of the car department down to the inspectors. Nearly all of these look upon the work of the inspectors for the Interstate Commerce Commission as being of advantage to the companies in many ways; and I believe, as the work progresses and the inspectors become more acquainted with those in charge of the car and engine departments of the different railways, a feeling of friendship and good-will will be cultivated; that the Interstate Commerce Commission through its inspectors of safety appliances will be looked upon as a cog in the wheel that helps to carry on the safe transportation of passengers and freight over this broad land of ours, and that the accidents to life, limb, and property will be reduced to a minimum.

Yours, respectfully, A. H. HAWLEY, *Inspector.*

REPORT OF R. R. CULLINANE.

NASHVILLE, TENN., *September 8, 1902.*

EDWARD A. MOSELEY,
Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: Conditions in regard to safety appliances are vastly better, in a general way, now than twelve months ago, but while this is true, there is one thing that is absolutely necessary to get conditions much better, and that is, there should be an amendment to the safety appliance law requiring the railroads to have at least 75 per cent of the cars in each train equipped with air. This would add a great deal to the safety of the men employed in handling those trains. Also, the law should be by all means amended so as to include the equipment with automatic couplers, in addition to all cars so equipped, all engines, tanks, and other vehicles. I see some of the engines with pilot bars in front and open casting on the rear of the tank, and when you put a man in there to couple them up to cars equipped with automatic couplers you have him in a very dangerous place—far worse than when the equipment was the link-and-pin coupler.

As to the condition of couplers as compared to twelve months ago, there is a general improvement in regard to draft rigging, yet there are a great many old, light cars that are weak. Quite a number of roads in the past twelve months have changed their standard of drawbars. A number of roads have done away with the old-fashioned knuckles with link slot and pin holes, and by so doing have strengthened their knuckles greatly, giving them a great deal more wearing surface.

I find a great many very careless jobs done on cars. I say careless, as I do not think the companies would knowingly turn men loose on their cars that were really so ignorant; so it must be carelessness. For instance, a car is equipped with a certain kind of coupler that has an automatic set or lock and it is broken or pulled out and replaced with a different kind of drawbar that has no automatic set or lock. The repairers leave the same fixtures, brackets, levers, etc., which are not at all suited for the new coupler. This renders it very dangerous. Of course if a drawbar has no automatic set it should have brackets with locks attached. I found a car a few days since with a Janney lever, Chicago coupler, and buckeye brackets. You can see at a glance that it is impossible for them to work right under such conditions.

As to air brakes, I will say that I think the braking service is far better than it was twelve months ago; or, in other words, you would a year ago find five or more cylinders needing attention where you will find one now. Yet to-day, strange to say, I found a car belonging to one of our longest trunk lines on which the last stencil marks read "Nov. 23–97."

Since September 1 of last year, when the price was raised to a reasonable rate for cleaning triples, they have had much more attention paid to them; yet you come across a car occasionally that has missed the air plants for two or three years.

In places I find a great many brakes cut out and no card attached to show why they were cut out. There are quite a number of causes for this. First, many of the old-fashioned small pumps are still in use that will not supply air for so many cars, and especially when there are so many small leaks and sometimes some right considerable leaks in train pipes, cross-over pipes, hose, and gaskets. Not nearly enough yards are equipped with air plants for testing brakes and hunting out the leaks in train pipes, and in nearly all yards the force of men is inadequate for the amount of work that should be done, and it is one of the impossibilities to adjust the brakes and piston travel with any degree of certainty without air to test brakes to see what you are doing. Then all way cars should be equipped with a 12 and 18 inch screw wrench and a good Stilson wrench. With these the crew can stop many leaks while on sidings, at meeting points, and at coal and water stations. While I am not advocating making a repair crew of the train crew, they should be furnished with these tools for use in case of emergency, and the yard repairmen

should do their work as though the train crew had no tools at all. I find that release rods are neglected to a considerable extent. Some of the repairmen seem to think if there is a rod on a car it is all right. Again I come in contact with quite a number of coal dumps with cylinder and auxiliary on one side of car, where only one release rod could be used.

The condition of lift chains and their length is considerably better than heretofore; yet, as with the other safety appliances, there is room for improvement. Entirely too many lap rings are used, and a great many lift levers are put on cars in such way that they are useless, inasmuch as they are placed between the brake staff and the retainer pipe and bind so tightly against the brake staff that occasionally you find one with which you can not lift the lock pin at all, especially if the hand brake is set.

The use of lag screws for applying hand grabs has been discontinued to a great extent in the past two years, and should be entirely discontinued, for they are very dangerous. All hand holds and ladder rungs should be fastened on with bolts going entirely through the body of the car, head and washer at one side and nut and washer at the other. While the use of lag screws has been largely discontinued, there are still quite a number of lag screws in use.

As to engines and their safety appliances, I note that one of our great trunk-line roads has a solid drawbar in front of the engine, all one piece; that is, there is no knuckle to open or close, and the drawbar is rigid, does not turn back nor drop into pilot. Also they have no steps on the pilot for men to stand on, which makes work very dangerous. Again, they have some of their engines equipped with the ordinary drawbar, containing knuckle lock pin, etc., yet they have no lift lever attached, nor steps on pilot, nor hand holds on bumper.

Electric headlights and other improved lights have proven a great factor in safety and protection to travelers and employees. The old-fashioned coal-oil head lamps should be a thing of the past. They were good twenty-five years ago, but at this advanced age of high speed they should be abolished.

I am convinced now more than ever that all box cars should have side ladders instead of end ladders, unless they are fixed, as are the Pennsylvania's cars, with side sill step, three hand grabs, and a protecting end sill, and the ladder near the center of the car, so that if a man is ascending or descending the ladder rounding a short curve he will not be crushed to death. Besides this, where cars have the projecting end sill they do not get so close together at the corners in rounding curves. I have canvassed yardmen, freight brakemen, and all that I have come in contact with that are really interested in the matter, and have found only two men out of three or four hundred that favored end ladders, and they favored them only because the conditions required them. The sidings in the yards were so close together that they could not use side ladders, for the cars on the next track would drag men off.

In the last few days I have noticed lever brackets newly put on with no locks to them and no automatic lock in lock pin; and I notice a great many inspectors at work who have never been educated up to the importance of looking out for the safety appliances, but who look very carefully to the conditions of running gear. More care should be taken in the selection of these men, for they hold very important positions. If general foremen and master mechanics would spend a few hours a week right out in the field among their inspectors and repairmen, and give them practical lectures and impress them with the importance attached to their carefully keeping an eye open for defective safety appliances, they would do much good.

Yours, most respectfully,

R. R. CULLINANE.

REPORT OF INSPECTOR W. R. WRIGHT.

ST. LOUIS, *November 6, 1902.*

EDWARD A. MOSELEY,

Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: I note many changes for the better in the way of keeping up the safety appliances to the highest standard of efficiency. This does not apply to all roads. Some take great interest in keeping their equipment in first-class repair; others, I regret to say, are not so particular, and seem to pay little attention to it except when the inspector of safety appliances appears on the scene, when all is activity and hustle until the inspector has taken his departure.

I find that the standard height of cars is being carefully watched and maintained by all railroads.

Couplers in many cases have knuckles badly worn, even to the danger point, and these are not discovered until pointed out by the Government inspector. Inspectors

for the railroads are not particular about keys in knuckle locks, seldom paying any attention to this defect, nor is the defect No. 12 (inoperative locking pin or block) given any special attention. If this looks all right it is passed, tests seldom being made. Until the railroad inspectors are better educated there will be little improvement. Many inspectors go over a train of cars making the usual inspection for defective running gear, slid-flat wheels, lug bolts missing, broken draft bolts and timbers, and in fact make inspection in the usual way, but do not see defects to safety appliances, and particularly to air-brake rigging. It is not unusual to find loose cylinders and loose blocks, which vibrate and cause the unions to loosen up, thereby causing leaks for which it is necessary to cut out the brake.

Proper care is not given to the inspection of uncoupling mechanism. It is impossible to determine the condition in all cases without making a test. This, however, is very seldom done, and if the different parts are there, no matter how applied, the car is not considered defective. One reason for this is that inspectors are required to make light repairs during the time there are no trains to inspect. Where men are engaged to work exclusively on light repairs the inspectors take an interest in looking up all defects and marking them while making the regular train inspection.

I would here invite your attention to a habit that car repairers on most lines have fallen into. A train reaches a division terminal, and inspection is made in the usual way; defective parts requiring light repairs are chalked by the inspectors. The men whose duty it is to make the repairs wait until the train is switched and made up before any effort is made to do the work, and in many cases the engine is ready to back on to the train as soon as it is made up. Before the repairs can be made the air has been tested and the train is ready to pull out. They have orders to meet other trains, and if held it causes serious delay to the traffic in general. The result is that the train is allowed to go forward with the same defects to safety appliances that it had on its arrival at the division terminal. And it is not an unfrequent thing for me to find, on my arrival at the next division terminal, the same identical cars with the same defects that appeared at the previous point of inspection; whereas, if the men whose duty it is to make the repairs would do so without waiting for the train to be made up these defects could be repaired before the departure of the train. In many cases cars are allowed to go hundreds of miles in a defective condition, all owing to the practice of waiting for trains to be made up and ready to leave before any attempt is made to make necessary repairs. I have invited the attention of a number of foremen to this practice, and they frankly acknowledge that such is the case and say they will correct it without delay.

Safety appliances are often cobbled up with all kinds of scrap, chains, etc., because, the men say, it is almost impossible to get material with which to make repairs. This is a bad state of affairs and forms an excuse for the foreman; it also has a tendency to encourage carelessness. I have had foremen of repair tracks go over train yards with me, and when it came to testing the uncoupling mechanism they did not understand what is really required to make the mechanism operative, except on the couplers that they were most familiar with, or the coupler that their company had adopted as standard. This explains why so many cars are turned out from repair tracks with levers inoperative on account of having been applied wrong.

Yet these men are earnest in their efforts and do the best they can under the circumstances and with the limited amount of help they are allowed These foremen sometimes have an allowance, with instructions that their expenses must not run over a given figure for the current month, and this, too, when it can not be foreseen by any person what the work can be kept up for. To meet the figures, inspectors are instructed to mark in as few bad-order cars as possible. I know of cases where such instructions were to mark nothing in for repairs that was safe to run.

In regard to the condition of air brakes, I find, I am pleased to say, a vast improvement in the care of the mechanism, and, aside from the trouble mentioned above—that of inspectors neglecting to mark cars to repair tracks for loose cylinders and cylinder blocks—it is as nearly perfect as can well be expected to have it until the charge for cleaning and oiling cylinders and triple valves has been increased so that each company will find it to its interest to keep the air brake up to the highest possible standard of repair and not allow other companies to do the work.

With reference to the narrow-gauge lines I find that little, if any, attention is given to the matter of safety appliances. All narrow-gauge equipments that I have inspected still have link-and-pin couplings, although a great many of the cars are new and so constructed that the automatic coupler could be easily applied. Yet these cars have been turned out of the shops of the builders with the link-and-pin coupling, while I am informed by an authority that I have no right to question that these cars would have been turned out at exactly the same cost to the purchasers had they been equipped with the automatic coupler.

It has been claimed by some that the application of the automatic coupler has had a tendency to increase the yard breakage. I will say that for the ten months last past I have made careful inquiry and have gathered all the information possible with reference to this matter, and I am free to say it has been somewhat of a surprise to me to find that this claim is not borne out by the statements of the men who actually come in direct contact with the handling and repairing of such cars. In fact, I have been able to find very few men that will acknowledge that the breakage is as great as when the old cast draw-head and the link-and-pin coupling were in use. I have carefully noted yardmen in the performance of their duties in different yards in widely different sections of the country and have not seen a single case of breakage where it could be attributed to carelessness on the part of yardmen. I have, however, noticed several cases where the uncoupling mechanism has been out of order and the men making the cut had to run alongside of the train and hold up the uncoupling lever until he got around a curve or some other obstruction that prevented the engineer from seeing the signal. In each of these cases it resulted in damage to the cars; while, as a matter of fact, if the uncoupling mechanism had been kept in proper repair, so that the lever could have been set to locking position, the yardman would have been in position to give the signal at the proper time and would thereby have avoided the damage to equipment. If the uncoupling mechanism is not kept in repair the danger to employees, in my opinion, is as great as when the link-and-pin coupling was in use.

Another great danger to train and yard men is that tracks are too close together in some of our train yards; so close, in fact, that a man can not pass along between the tracks while cars are standing on both tracks without stooping beneath the body of the cars. This is caused by the increased width of the cars, no provision having been made for safety of the men who are compelled to handle them in yards, the tracks being the same distance apart as they were before the width of cars was increased. This, I find, is complained of by yard men in particular; and in many places they call attention to it and ask if it can not be remedied. While it is a matter that may not come under the jurisdiction of the Commission, it has contributed to the cause of a number of serious accidents, and in my opinion should be given immediate attention.

Yours, very truly, W. R. WRIGHT.

REPORT OF INSPECTOR H. K. SWASEY.

BOSTON, *September 16, 1902.*

EDWARD A. MOSELEY, ESQ.,
Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: Replying to your request for a report upon conditions as to safety appliances, I find the practice of cutting out air brakes without attaching the required defect card is very common. All kinds of excuses are given by car inspectors as a reason for their being cut out. In some cases the blame is attached to mischievous boys. Another excuse is that trainmen are in the habit of cutting out air to relieve the pump. It is a very common occurrence for inspectors accompanying the Government inspector, on finding a car with the air cut out, to declare it cut out for no defect and to immediately proceed to cut the air in. This I consider entirely wrong, as the inspector has no knowledge of the condition of the brake and does not know why it was cut out. Serious damage is likely to result. The remedy for this is the attaching the defect card on all cars at the time the air is cut out, as the rule directs.

I find the practice in placing the date of cleaning and oiling the cylinder and triple valves very unsatisfactory. In many cases the stencil is not used, but the date is written with white or colored chalk, which in a short time is obliterated. In other cases the only marks on the triple valves are the letters "O. K.," which take the place of the date.

I frequently find that the air-brake hose becomes spongy and cracked from being bent and chafed; and, as the bursting of the hose when the train is on the road might mean loss of life and destruction of property, I think that the attention of the inspector for the railroad company should be called to such a case, with the recommendation that such hose be at once taken off.

It is customary in placing sill steps in many cases to locate them under the sill, secured by lag screws, which in a short time become loose, especially on new cars, owing to the seasoning of the wood. I am inclined to think that the better way is to attach them to the outside of the sill by four bolts, which can be tightened from time to time as occasion may require.

It often occurs that platform cars loaded with material which projects beyond the end of the car, coming in contact with box cars in front or in the rear, strike the rounds of the ladder of these cars and bend them, unfitting them for use and render-

ing them unsafe, especially at night. I have watched inspectors engaged in straightening out these defective ladder rounds, and have seen them use a common iron bar by placing the bar under the round, using the end of the car for a brace. They accomplished their purpose, but in so doing weakened the round, and after a few times repeating this they rendered it unsafe at the point where it was bent.

In regard to the material of the ladder, I would like to suggest wood instead of iron. My reason is that the protruding wood or iron being hauled on a car in front or in the rear, coming in contact with the wooden round, would break it, and thus necessitate a new one; whereas if the round is iron it would bend and split out the uprights and thus render the whole ladder unsafe. In the construction of ladders for freight cars I would suggest two uprights of hard wood securely bolted to the end of the car, bolts and not lag screws being used, the rounds being secured to the ladder by bolts.

Regarding the location of ladders, I have made it a practice during the last three months to ask practical railroad men their opinion in regard to the location or proper place for the ladder, and I have yet to find anyone in this part of the country (New England) who does not readily say the end of a car rather than the side; but I think that in the South and West the idea of placing the ladders is quite the contrary, the side ladder being in favor.

In regard to roof hand holds or grab irons, I find that they are attached to the cars in various ways. In my opinion they should be placed on the top or side of the car parallel with the top round of the ladder, 15 inches back from the end or side of the car, fastened not with lag screws, as is often the case, but with substantial iron bolts.

Regarding uncoupling levers, I am led to think that levers extending from one side of the car to the other give better satisfaction than the short levers. I am convinced that the long lever is the best uncoupling lever in use. In regard to the support of the uncoupling lever, it is very common to find that these castings are loose—both the inner and end castings—owing to the fact that they are secured by common lag screws fastened to the deadwood of the car. I also notice that the larger per cent of the inner castings, or keepers, are found loose. This is largely owing to the use in freight-train service of locomotives equipped with the link and pin coupler, having a projecting casting, commonly called a "Dolly Varden," attached to it.

In concluding, I will say that my experience with railroad officials, inspectors, and employees generally, has been very satisfactory, and I believe there is a general improvement in the condition of safety appliances, and a desire on the part of the railroad inspectors to have the conditions satisfactory.

Yours, very truly, H. K. SWASEY.

REPORT OF INSPECTOR J. C. SEARS.

WASHINGTON, D. C., *September 20, 1902.*

EDWARD A. MOSELEY, Esq.,
Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: Replying to your request of the 4th instant, I have the honor to report that I have noticed a marked improvement in the condition of safety appliances throughout the sections of the country in which I have conducted inspections.

One of the most common defects I have found is "broken chains;" that is, chains broken between lock pin and lift rod. When a chain is thus broken, the switchman has to run along between the rails and hold the lock pin up until the cars separate. He is liable to be knocked down and killed while doing this.

"Chains too long" and "chains too short" are two other prevailing defects. With either of these defects present a man cutting off cars must run alongside the car, holding the lever up, or he has to hold or possibly ride on the end or side ladder, holding the lever up. In this way, both hands being engaged, should no one be near to give a signal, he is in danger of being knocked off and possibly thrown under the cars should they strike other cars with undiminished impact or should his body project so far from the side ladder that an adjacent car might strike him.

It seems advisable to have some sort of self-locking device in couplers. Many trunk lines have inspectors and repairmen who look after locking-up devices, attempting to keep them in repair; but, even with the best of means, the present devices for locking up uncoupling levers are inadequate to the perfect performance of that work.

Few couplers are too high or too low; most of them are applied as the law seems to provide.

Badly worn knuckles are found now and then, but as a rule they attract immediate attention and are replaced by perfect knuckles.

Uncoupling levers which have become bent are much in evidence. It is often brought about by engines having "Dolly Varden" or friction plates over rear-end couplers, which appliance often strikes the uncoupling lever on a freight car, bending it and loosening or breaking the inner casting or keeper.

Few loose hand holds are found, probably because particular attention is being given them at the present time. The hand holds on ends of cars are not placed in uniform positions as recently recommended by the Master Car Builders' Association. Some roads apply them 12 inches above the center of the drawhead casting, some 36 inches, some perpendicular, and some at an angle of perhaps 45°. Conditions will undoubtedly improve as soon as the practice recommended by the association becomes more familiar.

I have heretofore been in favor of side ladders for box cars, but, having seen the closeness with which tracks are put in in the East, I am of the opinion that end ladders are preferable, at least where so little clearance is left between tracks that a man's body is exposed to the danger of being brushed off a side ladder. I should, if recommending any practice, be in favor of supplying both side and end ladders. During the past year I have asked several hundred men as to their preference in regard to the placing of ladders, and find that they differ greatly. Men in the East wish for end ladders, while men in the West prefer side ladders, undoubtedly for the reason I have mentioned above.

On cars where end ladders are applied it does seem that there should be two hand holds running lengthwise of the car on its side to enable men in climbing up to reach the ladder more safely and easily than when there is but one hand hold so applied, and that one in many cases applied perpendicularly.

Some railroads equip their cars with end ladders and place a roof hand hold running lengthwise of the car, leading one to believe the ladder to be on the side of the car under the hand hold. I have been told of many instances where men have lost their lives, or have been frightfully maimed as a result of taking this for granted, and it seems to me that the roof hand hold should occupy a known relative position to the ladder in all cases on all cars.

Men in yard service complain of the great number of kinds of couplers in use. Each road has its idea as to which particular pattern of coupler is best for them to use, but it seems to me that no coupler is automatic which does not kick open with the lifting of the uncoupling lever. There are few couplers in use which do this, however. Men have too often to go between cars to open knuckles.

The larger roads throughout that part of the country where I have inspected are giving air brakes proper attention. I do not now find as many cars with triple valves dirty as I did last year. Cars with air brakes cut out are not so numerous as previously.

There are too few air-brake test plants; many large trunk lines have no provision for testing air-brake appliances properly. Air-brake cars with the air brake cut out should certainly be tagged with an air-brake defect card.

Many roads work their trains with air-brake cars placed at the head of train on a percentage basis—a certain percentage of the number of cars in train must be air-brake cars and placed at the head of the train and working. This is all right if the percentage called for is large enough, but take, for instance, a train of 50 cars, and 15 of them air cars coupled and working properly at the head end of the train, 35 other cars not being worked with air. The pressure resulting when an ordinary application of air is made on a train so constituted is somewhat appalling; but what will it be when an emergency application of air is made?

I can think of no better way to keep air-brake cars in good repair than to cause them to be kept ahead, and in use, on all trains. This being done, their condition will be bound to become known, and air brake defect cards can be attached and needed repairs made at the proper repair stations.

Railroad officials are apt to say it is inconvenient to set out a car from behind 30 or 40 cars; but it seems not difficult with an engine properly able to handle that number of cars.

Train yards should be piped so that trains may be charged and tested before the engine couples on; for crews are seldom called more than an hour before leaving time and that interval might not afford sufficient time to put the brake system in good shape for a trip.

The brake is truly the life-preserver of the train, and thus of the trainmen. More inspectors, more air-brake repairmen, more care mean better and safer service, and I believe the day is approaching when we shall hear the railroad officials expressing themselves as I have endeavored to express myself in this report. The officials are at this day willing and desirous to assist the Commission in securing a better condition of existing appliances and, to a man, are courteous when interviewed regarding their equipment.

Respectfully, yours, J. C. Sears, *Inspector.*

REPORT OF INSPECTOR J. E. JONES.

CHICAGO, ILL., *September 16, 1902.*

Mr. EDWARD A. MOSELEY,

Secretary Interstate Commerce Commission, Washington, D. C.

DEAR SIR: Having been requested by you to make a report in regard to safety appliances, I desire to say that I find an effort is being made by all concerned to comply with the law, and I believe that the railway managers realize that they are practicing economy by keeping the safety appliances in the best possible condition. However, I think there is room for decided improvement in the existing conditions.

As soon as practicable the railroads should select and adopt, as a standard, an automatic coupler which fills the requirements of ordinary service. It should be strong and easy to operate, and should have a device for opening the knuckle, which must be positive and simple, as both the spring and the gravity opening knuckle have proven unsatisfactory. The locking device should be strong and not liable to get out of order easily; the chains and clevises should be strengthened.

I find a great many lock chains which have been repaired with an open link, making the chain too long or too short.

Some of the so-called Master Car Builder couplers are not automatic in any sense of the word, and are the primary cause of many of the accidents which have happened since the adoption of the Master Car Builder couplers.

The practice of men running in front of moving cars to open knuckles is very common and is dangerous in the extreme; yet it can be witnessed in any yard daily. Some couplers require so much force to operate them that, after a man has tried to make a coupling once or twice, they will back off and take a run at it. If the draft attachments hold they generally succeed in making connection, but this creates defects which develop on the road and cause trains to part, and often results in serious derailments. A large per cent of the damage to equipment is directly traceable to the unautomatic coupler.

I find that some roads are making a practice of cleaning and oiling triple valves under the cars in yards where there are no facilities for testing work after it is done. Better results could be obtained by cleaning and testing the triples in the shop or air-brake room, and this work should be done by competent men, who should be provided with apparatus which will give an actual service test.

More attention should be given to stenciling the dates on cylinders. All old dates should be removed and the new date put on with stencils and white paint. The men whose duty it is to do this should be impressed with the idea that anything that is worth doing is worth doing right. I find that some men are using chalk to mark the dates on cylinders. This is not in accordance with the rules, and should not be permitted.

I find a great many retaining-valve pipes broken off or leaking at the triple, caused by the vibration of the pipe, which is not secured to the car except at the end sill. This could be prevented by securing the pipe to a block.

Some roads are not adhering to the rules and recommended practice in the location of hand holds and grab irons on new equipment. Some plan should be devised to compel the use of Master Car Builder standards on new equipment. It is very essential that the grab iron shall have a uniform location, so that a man may know where to find it in the dark or by the uncertain light of his lantern. The hand holds on the roof should be placed in such a position as to indicate the location of the ladder.

I think it a dangerous practice to put the ladder on the end of the car and the roof hand hold lengthwise of the car near the edge of the roof; it is very deceptive and misleading.

More attention should be given to hand brakes. Since the air brakes have come into general use for handling trains, the hand brakes have been overlooked to a certain extent. Many ratchets are loose on the staffs, and the dogs are loose or improperly set, so that they will not hold. In case of emergency much valuable time is lost, thereby increasing the danger by these very common defects.

The fact is apparent to me that few roads give the same attention to foreign cars that they do their own. I find the percentage of defects larger on foreign cars in almost every case. The custom of receiving cars on record is largely responsible for this condition, and should be discouraged. Under the joint agreements existing at some of the large railroad centers, it is possible for a car to be received in a defective condition, handled by another road or switching association, unloaded, and returned to the original road, and go into service again still in a defective condition.

I believe it is the intention of the Master Car Builders' Association, in making their rules, to encourage the repairing of cars as soon after they become defective as possible. If the rules allowed a larger price for such work as the repairs of air brakes, couplers and their parts, operating devices for the same, ladders, handholds and grab irons, it would insure their being given better attention.

Yours, very truly,

JAMES E. JONES, *Inspector.*

Statement of conditions in 1893 and 1901.

	1893.	1901.	Increase 1901 over 1893.
Number of cars in freight service	1,013,307	1,464,328	451,021
Number of locomotives in freight service	18,599	22,839	4,240
Number of tons carried	745,119,482	1,089,226,440	344,106,958
Number of tons carried 1 mile	93,588,111,833	147,077,136,040	53,489,024,207
Average number of tons in train	184	281	97
Number of trainmen employed (other than enginemen and firemen), including switchmen, flagmen, and watchmen	146,544	164,161	17,617
Number of tons carried for each trainman employed, etc	5,085	6,635	1,550
Number of tons carried 1 mile for each trainman employed, etc	638,635	895,932	257,297
Number of freight cars for each trainman employed, etc	7	9	2
Number of train miles run for each trainman employed, etc	5,764	5,532	a 232
Number of enginemen and firemen employed	79,140	92,458	13,318
Number of switchmen, flagmen, and watchmen employed	46,048	47,576	1,528
Number of trainmen employed in coupling and uncoupling cars for each one killed (other than enginemen and firemen), including switchmen, flagmen, and watchmen	349	829	480
Number of trainmen employed in coupling and uncoupling cars for each one injured (other than enginemen and firemen), including switchmen, flagmen, and watchmen	13	59	46
Number of trainmen killed in coupling and uncoupling cars (other than enginemen and firemen), including switchmen, flagmen, and watchmen, for each 1,000 employed	3	1	a 2
Number of trainmen injured in coupling and uncoupling cars (other than enginemen and firemen), including switchmen, flagmen, and watchmen, for each 1,000 employed	77	17	a 60

a Decrease.

RAILROAD ACCIDENTS.

SUMMARY TABLES FROM ACCIDENT RECORDS FOR THE YEAR ENDING JUNE 30, 1902.

TABLE A.—SUMMARY OF CASUALTIES TO PERSONS.

	Passengers.		Trainmen.		Other persons employed on or around trains.	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
Collisions	130	2,298	366	2,456	19	265
Derailments	37	1,194	193	1,040	23	205
Miscellaneous train accidents (excluding the above), including locomotive boiler explosions	.....	94	37	538	.....	12
Total train accidents	167	3,586	596	4,034	42	482
Coupling or uncoupling cars	.....	.....	120	1,816	4	34
While doing other work about trains or while attending switches	.....	1	52	2,880	6	175
Coming in contact with overhead bridges, structures at side of tracks, etc	7	38	96	958	1	15
Falling from cars or engines, or while getting on or off	99	1,250	408	5,654	29	192
Other causes	30	1,214	235	4,560	39	404
Total (other than train accidents)	136	2,503	911	15,868	79	820
Total all classes	303	6,089	1,507	19,902	121	1,302

	Switchmen, flagmen, watchmen.		Other employees.		Total employees.	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
Collisions	6	44	34	300	425	3,065
Derailments	.....	17	13	118	229	1,380
Miscellaneous train accidents (excluding the above), including locomotive boiler explosions	.....	12	6	39	43	601
Total train accidents	6	73	53	457	697	5,046
Coupling or uncoupling cars	18	230	1	33	143	2,113
While doing other work about trains or while attending switches	11	185	14	326	83	3,566
Coming in contact with overhead bridges, structures at side of tracks, etc	2	63	5	34	104	1,070
Falling from cars or engines, or while getting on or off	33	367	67	654	537	6,867
Other causes	117	444	561	9,641	952	15,049
Total (other than train accidents)	181	1,289	648	10,688	1,819	28,665
Total all classes	187	1,362	701	11,145	2,516	33,711

TABLE B.—COMPARISONS WITH PREVIOUS YEARS.

	1902.		1901.		1900.		1893.	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
Passengers in train accidents	167	3,586	110	2,338	93	1,999	100	1,703
Other causes	136	2,503	172	2,650	156	2,129	199	1,526
Total	303	6,089	282	4,988	249	4,128	299	3,229
Employees in train accidents	697	5,046	586	3,773	539	3,288	525	3,008
In coupling accidents	143	2,113	198	2,768	282	5,229	433	11,277
Overhead obstructions, etc.[a]	104	1,070	56	509	56	436	73	444
Falling from cars, etc	537	6,867	599	6,371	529	4,425	644	3,780
Other causes[b]	1,035	18,615	1,236	27,721	1,144	26,265	1,052	13,220
Total	2,516	33,711	2,675	41,142	2,550	39,643	2,727	31,729
Total passengers and employees	2,819	39,800	2,957	46,130	2,799	43,771	3,026	34,958

[a] In 1902 this item includes fixed obstructions at the side of the track as well as overhead.
[b] The diminution in the number of employees killed and injured by miscellaneous causes in 1902, as compared with 1901, is due, partly or wholly, to the inclusion in 1901 of employees in shops and on boats, wharves, and other places remote from the railroad, which are not included in the accident bulletins.

TABLE C.—COLLISIONS AND DERAILMENTS; DAMAGE TO CARS, ENGINES, AND ROADWAY.

	Number.	Loss.
Collisions due to trains separating	774	$391,489
Other collisions	4,268	3,894,194
Total	5,042	4,285,683
Derailments due to—		
Defects of roadway, etc	547	443,706
Defects of equipment	1,609	1,295,299
Negligence of trainmen, signalmen, etc	255	136,241
Unforeseen obstructions, etc	239	546,478
Malicious obstruction of track, etc	57	63,246
Other causes	926	874,753
Total	3,633	3,359,723
Total collisions and derailments	8,675	7,645,406

TABLE D.—CAUSES OF ACCIDENTS TO EMPLOYEES IN COUPLING AND UNCOUPLING CARS.

Sub-class.		Conductors.		Brakeman, etc.		Other employees.	
		Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
1	Sticking of parts (bent pins, etc.) preventing quick work	.....	2	3	33	.....	.....
2	Holding up pin by hand (presumably made necessary by defective uncoupling mechanism)	.....	6	2	124	.....	.....
3	Other causes, apparently due to defective coupler mechanism	.....	5	1	69	.....	.....
4	Defective draft gear (with automatic coupler)	.....	.....	.....	7	.....	.....
5	Coupling to an engine or tender	.....	.....	1	52	.....	1
6	Same (with link-and-pin coupler)	.....	.....	.....	12	.....	.....
7	Coupling on inside of sharp curve	.....	3	3	95	.....	3
8	Foot caught in or between couplers while adjusting coupler	.....	5	1	105	.....	1
9	Slipped, usually on ice or snow	.....	2	3	26	.....	.....
10	Foot caught in frog, guard rail, or switch	1	1	18	32	1	1
11	Caught by overhanging load (on platform car)	.....	.....	.....	18	.....	.....
12	Load shifted	.....	.....	.....	10	.....	.....
13	Engaged in operations preliminary to coupling	.....	5	32	154	.....	2
14	While coupling safety chains	.....	1	1	32	.....	4
15	Link-and-pin coupler	.....	1	1	99	.....	1
16	Link and pin, with automatic	.....	1	1	36	.....	.....
17	Coupling damaged cars (presumably an unavoidable risk)	1	2	5	67	.....	1

TABLE D.—CAUSES OF ACCIDENTS TO EMPLOYEES IN COUPLING AND UNCOUPLING CARS—Continued.

Subclass.		Conductors.		Brakemen, etc.		Other employees.	
		Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
18	Uncoupling without using lever (presumably by reason of defective uncoupling mechanism)		1	8	91		
19	Uncoupling, other causes			5	20		1
20	Miscellaneous	1	18	25	529		24
21	Not clearly explained		15	28	399	1	13
	Total	3	68	138	2,010	2	52

TABLE E.—CAUSES OF ACCIDENTS TO EMPLOYEES CLASSIFIED AS FALLING FROM AND GETTING ON OR OFF CARS AND ENGINES.

Subclass.	Causes.	Conductors.		Brakemen, etc.		Enginemen.		Firemen.		Other employees.	
		Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
	Fell from roof of box car by reason of—										
1	Defect in car		3	2	90					1	2
2	Ice or snow		3	3	73				1		
3	Parting of train		7	12	81				1	1	2
4	Derailment, collision, or shock due to abnormal movements of cars other than those in subclass 3	2	19	21	265		3	1	10	4	27
C6 5	While setting brakes		7	27	221						4
	Fell from—										
6	Coal car			4	13						5
7	Freight car other than box or coal car		3	1	15					1	5
8	Engine or tender	2	8	38	295	1	40	9	133		19
9	Passenger car		1		13		1				7
10	Engines, tenders, or cars (all kinds) not in motion		5	3	170		46		79		31
11	Miscellaneous causes	8	122	71	1,567	1	22	1	64	18	370
12	Not clearly explained	6	21	157	460		6	2	25	19	76
13	Slipped getting on moving trains or cars	3	39	32	407		2		3	12	89
14	Jumping off moving trains	2	42	20	374				2	10	91
15	Jumping from engines or cars anticipating collision, derailment, or other accident		6		91		19	1	42	1	9
C7 16	Fell from engines or cars by reason of defective handholds and sill steps		12	1	144				3		7
17	Getting on or off moving engine	1	49	31	723	3	80	1	97	3	78
18	Caught in frog, guard rail, or switch		1		16						
	Total	24	348	423	5,018	5	219	15	460	70	822

TABLE F.—ACCIDENTS DUE TO TRAINS PARTING.

	Causes.	Trainmen.		Passengers.		Cost.
		Killed.	Injured.	Killed.	Injured.	
1	Couplers pulled out	3	29		1	$83,680
2	Couplers broken		8		1	13,393
3	Couplers too low		7			2,816
4	Coupler lock failed to seat		1			1,421
5	Coupler lock worn, defective, or broken		5		1	2,973
6	Coupler worn or defective		3			3,300
7	Coupler lock pin jumped or worked up		2			1,275
8	Knuckle broken		20		3	24,322
9	Knuckle worn or defective		10		4	10,297
10	Knuckle pin broken		2			1,162
11	Continuous drawbar key broken or missing		1			3,116
12	Tailpin broken or pulled out		5		1	5,010
13	Short uncoupling chain		2			1,447
14	Bent uncoupling lever					200
15	Excessive slack in rear-end attachments					325
16	Loose carrier iron					1,330
	Total due to above causes	3	95		11	156,067
17	Couplers parted, cause unknown	11	225		55	336,714
	Grand total	14	320		66	492,781

CAUSES OF 27 MOST DISASTROUS BUTTING COLLISIONS IN THE QUARTER ENDING DECEMBER 31, 1901.

From Accident Bulletin No. 2.

Record number.	Train.	Killed.	Injured.	Damage.	Cause.
14	Passenger and freight			$2,500	Dispatcher gave conflicting orders.
34	do			2,500	Conductor and engineman of freight disregarded rule of superiority of trains, and occupied main track on the time of the passenger train. These men had been on duty 14 hours, 25 minutes.
12	do		9	2,985	Mistake in telegraphic order.
38	Freight trains	1	4	3,000	Ran past the meeting point.
17	do			3,400	Conductor and engineman overlooked meeting order
33	Freight and unattached locomotive.			3,400	Engineman (employed by a contractor, not by railroad company) misread an order—read 6 for 62.
39	Freight trains		6	4,600	Engineman neglected to observe train-order signal indicating "stop."
5a	do		4	4,900	Conductor and engineman "overlooked" opposing train.
15	do			4,900	Operator failed to deliver order.
5c	Passenger and freight	4	4	4,990	Assumed (without warrant) that a wreck would block the road and thus protect against opposing train.
3	Passenger trains			5,700	Engineman forgot meeting order.
11	do		9	6,000	Engineman (experienced) started from station 3 minutes ahead of time.
37	Freight trains	2	8	6,600	Engineman met a certain train; assumed it to be another train; failed to stop and positively identify.
4	Passenger and freight	1		7,400	Operator delivered an order not correctly written; had been in service 6 months.
7	Freight trains			7,500	Operator (of 5 years' experience) failed to deliver telegraphic order.
40	do	2		7,500	Train failed to wait at station as ordered.
35	do			8,000	"It is supposed that the engineman (of one of the two trains) had lost his bearings."
6	do	4		8,200	Mishandling of orders by dispatcher and operator.
13	Passenger and freight		12	9,200	Operator (of 5 years' experience) neglected to deliver order; had been on duty 10 hours.
36	Freight trains	1		9,500	Order not delivered. Day operator went off duty without notifying night operator that an order was on hand to be delivered.
65	Passenger and freight	4	30	10,000	Train ran past the appointed meeting station.
5	do		10	10,600	Conductor and engineman of freight overlooked on the time-table the schedule of the passenger train.
5b	Freight trains	3	1	12,000	Neglected to send out flag.
16	do	4	9	12,136	Conductor and engineman failed to carefully read train register.
67	Passenger and freight	11		41,800	Forgot telegraphic order or miscalculated time.
60	Passenger trains	7	17	72,200	Left station 5 minutes earlier than special order authorized.
57	do	26	111	35,000	Engineman forgot or misread meeting order.
	Total, 27 collisions	70	234	306,511	

CAUSES OF FORTY-ONE MOST DISASTROUS REAR COLLISIONS IN THE QUARTER ENDING MARCH 31, 1902.

From Accident Bulletin No. 3.

Record No.	Train.	Killed.	Injured.	Damage to cars and engines and roadway.	Cause.
36	Freight trains	4	11	$1,400	Train approached water tank at uncontrollable speed.
8	do	1	3	1,571	Block signal set at clear when block section was not clear.
24	Passenger and freight.		2	2,000	Special passenger overtook freight; weather thick, flagman "could not be seen."
25	do	1	3	2,000	Misplaced switch.
38	Freight trains			2,000	Improper flagging.
11	do			2,072	Flagman failed to go back far enough.
27	do			2,033	"Engineman exercised poor judgment."
28	do			2,100	Flagman failed to use torpedo.
5	Passenger and freight.		2	2,200	Improper flagging.
14	Freight trains			2,200	Fast running and improper flagging.
42	do			2,200	Approached yard at uncontrollable speed.
29	do	1		2,393	Neglected to flag.
16	do			2,400	Flagman failed to go out while his train was switching.
39	do			2,600	Engineman failed to keep a good lookout.
34	do	1	1	2,800	Engineman (and brakeman) asleep on engine. Fireman did not watch for signal.
35	do		2	2,900	Runaway on steep grade.
20	Passenger trains		7	2,400	Failed to flag.
22	do		3	2,400	Misplaced switch (at station); switch obscured by steam.
21	do		17	2,465	Failed to flag.
9	Freight trains		4	2,500	Do.
30	do	3	1	2,900	Fast freight overtook local freight at station in a blizzard.
43	do			3,000	Failed to flag.
31	do		1	3,100	Flagging neglected, and train approached station too fast.
37	do	1	1	3,235	Failed to flag.
41	do			3,300	Too high speed; failure to flag.
2	Passenger trains		6	3,500	Neglected 5-minute time interval and also approached station too fast.
17	Freight trains	1	1	3,500	Improper flagging.
32	do			3,500	Train approached station too fast; engineman had been on duty 18¾ hours.
26	do	1	4	3,678	Failure of automatic block signal.
4	First-class (not passenger) train and freight.	4	5	3,800	Block signal set at "clear" when block section was not clear.
13	Freight trains	1	2	4,000	Do.
7	do			4,300	Too high speed.
10	do			4,600	Engineman "claims" did not see flagman.
33	do	3	7	5,000	Runaway on steep grade of 37 cars, only 8 air-braked. Crew had been on duty 25 hours; 3 brakemen had had less than 3 months' experience.
40	Passenger and freight.		1	5,000	Too high speed; failure to flag; conductor and engineman at fault; each had 1 year's experience; flagman, 3 months.
23	do	2	5	5,500	Freight overtook passenger train, which, by reason of leaky boiler, was losing time and was not protected by flag.
15	A freight and a work train.	2	3	6,000	Conductor of work train overlooked regular train on time table.
1	Passenger trains	17	150	9,800	Engineman ran past block signal indicating "stop."
19	Freight trains		1	10,900	Conductor neglected to display tail lights and flagman neglected to go back with stop signal.
18	Passenger trains		12	13,000	Flagman (at night) failed to go back far enough; thought an approaching train was a yard engine.

From Accident Bulletin No. 3—Continued.

Record No.	Train.	Killed.	Injured.	Damage to cars and engines and roadway.	Causes.
43a	Freight trains	.....	.....	$14,000	Too high speed on descending grade; train of 40 cars, all had air brakes, but only 12 of them were connected up; 3 brakemen had 15 months', 10 months', and 2 months' experience, respectively.
	Total, 41 collisions.	43	255	160,247	

"THE SUPERINTENDENT, THE CONDUCTOR, AND THE ENGINEMAN."

AN ARTICLE COMMENTING ON ACCIDENT BULLETIN NO. 2; BY E. E. ADAMS, ASSOCIATE EDITOR OF THE RAILROAD GAZETTE; REPRINTED FROM THE ISSUE OF THAT PAPER DATED JULY 18, 1902.

From one very practical point of view these three officers, or employees, or classes are more important than any others in the railroad service. A railroad is nothing but a transportation machine; the movement of cars is the essential thing in railroad transportation; no cars are moved except by locomotives, and the man who controls the engine therefore performs a most vital function. The conductor is almost or quite equally important, because no one would think of requiring the engineman alone to perform all the duties of engineer, lookout, boss of brakemen, and train clerk; the responsibilities are so multifarious that most superintendents would deem it too risky. And the superintendent is indispensable—to say nothing of his other duties—because the work of a dozen or a hundred conductors and enginemen must be harmonized, and new men must be instructed. So much for my title. My subject is the relation of these men to the collision record of the last accident bulletin of the Interstate Commerce Commission, from which it appears that in the three months ending with December, 1901, there were in the United States 27 disastrous butting collisions, involving a loss, not counting the damage paid for injuries to persons or for losses of merchandise in the cars, of $306,511. The number of persons killed in these collisions was 70, and the number injured 234. These totals, be it remembered, represent only the 27 worst cases. The total number of collisions of all kinds reported in the three months here spoken of was 1,481, and the damage to rolling stock, track, etc., was $1,399,813. The bulletin giving these figures, with other facts concerning the accidents of that quarter, was published in the Railroad Gazette of June 27.

This record is a great disgrace to the railroad profession of America. It is true that the number of passengers killed and injured, as compared with the number of persons who travel, is an extremely small percentage, and that any man is likely to travel in passenger cars scores of years before he will be even injured. It is probably true also that travel by railroad generally is increasing in safety year by year, owing to the widespread adoption of improved standards of construction of roadway, cars, and engines (though the rapid increase in the size of freight cars and the transition from small cars to large and from hand brakes to air brakes have doubtless temporarily checked this progress); and having used the term "profession," I must also qualify my statement by recognizing the fact that the worst collisions have occurred on those roads where the professional spirit has had the least chance to assert itself. Moreover, the correction of deficiencies in the personnel—which deficiencies constitute the feature particularly demanding consideration in connection with butting collisions—constitutes the most difficult part of the problem under consideration, either for a professional railroad officer or for any other kind.

But notwithstanding these considerations on the favorable side, our collision record is a great blot on a page otherwise fair. In England, where, on their 21,000 miles of busy lines, the whole passenger traffic of 1901—1,500 million passengers—was carried without a fatal injury to a single passenger by a train accident, our methods of railroading are soberly characterized by the savage term "reckless;" and we can not with very good grace question our cousins' judgment, for the very great difference which one finds in the records of 1901 is not the only comparison of the kind that can be made; great differences between their records and ours have appeared in all

the yearly totals, except, perhaps, those of 1879 and 1889, when the Tay bridge and the Armagh disasters occurred. And our own daily newspapers are constantly finding occasion to condemn the conduct of one railroad or another, as a shocking collision occurs here or there.

In many, if not all, other features of railroading the progress which has been made in the art of safety can be definitely marked, and the efforts which have been made to improve the service can be shown to have tangible results; but in the prevention of collisions we are unable (with the exception of a single feature, which will be referred to later) to point to any important improvement during the past dozen years. It might be said that this bad showing in the matter of collisions is in part due to the nature of the case; that even if the number of collisions is reduced, by the exercise of great care and ingenuity, there must remain the fact that single-track running is very hazardous, that a very small error may produce a very great horror, and that therefore no reduction in the number of collisions, even if it be 75 per cent, can be expected to improve the record in proportion to the energy or money expended, because a single collision may kill a hundred passengers. But this does not alter the fact that every serious collision of passenger trains distresses the superintendent on whose line it occurs, injures the reputation of the road, and costs the company a large sum of money. Do not these considerations warrant some further and more thorough study of the causes of collisions?

I refer to the Government record for the reason that the facts are official, and because statements of the losses are given, though the circumstances of the accidents are in no important respect different from those of cases in the same class which have been reported in the Railroad Gazette month by month for many years past. Moreover, I do not wish to appear as the critic of the particular roads on which these particular accidents occurred, for, as was recently remarked by a prominent railroad president, "all roads have them;" and what I have to say may with propriety be given a general application. The causes shown in the official record may be classified roughly as follows:

	Reference number.
(*a*) Dispatcher's error	6, 14
(*b*) Operator neglected to deliver order	7, 13, 15, 36
(*c*) Operator wrote order incorrectly	4
Conductor or engineman, or both—	
(*d*) Disregarded rule of superiority of trains	34, 40
(*e*) Misread watches or miscalculated time	11, 38, 60
(*f*) Forgot or misread a written order	3, 17, 33, 57, 67
(*g*) Read register carelessly	16
(*h*) Misread time table	5
(*i*) Neglected to identify a train that was met	37
(*j*) Engineman passed fixed signal without observing it	39
(*k*) Engineman "lost his bearings"	35

I introduce detailed notes of specific collisions solely for the purpose of making clear the importance of the subject. I do not propose to discuss the nature of the varied causes in this list or the question of removing them one by one (though I do propose to consider one remedy), for that would take ten times too many words. Moreover, the causes have been much discussed already. The interested reader already has in his memory the causes of a score or a hundred collisions, and this article is not written for the purpose of rehearsing things thus already well known, but rather to ask some questions concerning the rules which are violated when collisions occur, with a view to seeing whether those rules can be better enforced. In short, the question is, must we continue to see published by the Government every three months a record of a thousand collisions, costing a million dollars, and killing a hundred persons, and feel compelled to offer nothing in explanation but the time-worn statement about the impossibility of controlling the personal equation? Are we to continue forever to assert that the rules are adequate and that the men are intelligent enough to understand them; that the men ought to do better because their own lives are at stake, if for no other reason, and that the railroads, never grudging any money expenditure, have done all they can? We ought to answer all these with a "no." To do so may take a long time and a good deal of money, but there is no question that at least an attempt to thus answer is a present duty.

I have said that the causes of butting collisions are too varied to be discussed here. Such a discussion would include consideration of forgetfulness on the part of conductors, enginemen, brakemen, and telegraph operators; mistakes in reading watches and time-tables and in subtracting and adding minutes and hours; effects of overwork and lack of sleep; improper lookout habits on the part of enginemen; defective work on the part of the officer who should teach or train these men; lack of a suit-

able age limit or experience limit in making appointments; wise or unwise policy in regard to punishments, and numerous other things. As before stated, these questions have been widely discussed; and almost any superintendent, trainmaster, or dispatcher will glibly give his views concerning them; but when we come to ask how extensively or how thoroughly these officers have applied their ideas to the actual instruction, warning, or improvement of particular conductors, enginemen, or operators the answers are almost always unsatisfactory. It would seem that each superintendent has so few collisions on his own road, and has, or believes he has, so few men needing warning or instruction that he deems radical action unnecessary. A disastrous collision happens on the A. & B. road to-day which is due to the same cause that figured on the X. & Y. road a year ago; but whether the superintendent of the A. & B. took any measures a year ago to give his men the benefit of the X. & Y. lesson is a question that is very rarely answered. The prevention of collisions of the kind we are now considering involves the most fundamental elements in an engineman's or a conductor's training, and yet we give to the subject much less attention in the way of instruction and supervision than we give, for example, to the air brake, which, in comparison, may be called a detail.

While, therefore, it is probably out of the question to profitably discuss these very interesting questions of discipline without first carefully investigating the conduct of a dozen or a hundred trainmasters' offices—which I have not done—there is one question which I do believe it is worth while to take up, without regard to whether the superintendent who reads this is or is not satisfied with his freedom-from-collision record, and that is the question of inspection. All of these mistakes which I have rehearsed are violations of simple rules, rules that are easily understood, and the investigation of a collision almost always shows that the rule was or had been actually understood by the person making the mistake. This fact invites the inquiry whether conductors, enginemen, and telegraph operators do not habitually relax necessary habits of vigilance. So many cases have occurred where a necessary habit had been neglected or a duty had been habitually performed in a way known to be short of perfect correctness that, for the purposes of the present discussion, I am safe in answering this query in the affirmative. These men do neglect simple safeguards every day. The safeguards are prescribed by the superintendent, and to omit them is a definite offense. Why is not this negligence prevented, or, at least, more effectually mitigated? Do superintendents make no attempt to cure it, or do they try to stop it and fail in the attempt?

There appears to be ample ground for the broad assertion that on very many railroads the inspection of the work of conductors and enginemen, and, indeed, of all classes in the train and station service, is done with but little system, often with none at all, and is very deficient in many respects. It may be answered that this is true, but that the fact has no force, for the reason that more thorough inspection is not necessary. The high character and intelligence of the men, the simplicity of their duties, and the universal prevalence of the rule to employ only men who have learned at the school of experience, justify the superintendent in telling the men what to do and then trusting them to do it. But this is just the point that I wish to combat. I can only make a beginning, but at least a beginning is, I believe, urgently necessary. A traveling salesman may be trusted for a year or ten years without inspecting his work; results are the only measure of his efficiency. An evangelist sent into Africa or Alaska, or a reporter sent to crawl into the crater of Mont Pelee, could hardly be made more efficient by inspection. But there is no excuse for not inspecting train work, except evidence that inspection would be impossible or would cost more than it is worth. I believe that the assumption that this last is true is a very common assumption; and that it is wrong.

What do we do in the way of inspection? Conductors are watched for the detection of dishonesty. Probably not enough of this is done, but the question is of only minor consequence here, because an honest conductor is probably as likely to cause a collision as a dishonest one. (Though it may be said, in passing, that inspection of a conductor's work in one line often spurs him to a greater efficiency in other lines.) Road foremen inspect the work of enginemen. This is the most useful inspection we have; but many roads have too few road foremen, and nearly or quite all of these men devote their chief attention to questions of economy, the use of fuel, and mechanical matters, leaving signals, train orders, time-tables, and lookout to take a secondary place. Instruction in air-brake practice is now quite general, and this involves to a considerable extent useful criticism on the past practice of the men instructed; but this can hardly be called inspection, and air-brake practice is not one of the chief topics in a discussion of butting collisions.

Some few roads have inspectors who visit telegraph and signal stations with considerable frequency, and some have all train orders sent in and looked over by the chief dispatcher or other critic, but it does not appear that many have made use of

this laborious but necessary check on the work of their operators. All efficient superintendents examine with care into the ability, habits, and general conduct of any of their employees who happen to make a blunder which necessitates an investigation and reprimand or discipline; and some take pains to see that the lessons of an accident investigation shall be promulgated for the benefit of other trainmen; but these bulletin lessons are usually very brief and there is no assurance as to how many of the men who read them actually reflect on them. Many trainmasters "make it their business to be out on the road as much as they can," but many do not do so, and often this phrase means but very little. At best the trainmaster does this work unsystematically, and usually it is secondary to other duties which press upon his time more constantly.

This short statement covers about all that is ordinarily done in the way of inspection; and a good deal of this work here described is not inspection at all. Conductors and enginemen are jointly responsible for the safety of the train which is placed in their charge; but if one is negligent, leaving important duties to be performed by the other alone, no one ever reports the fact to the superintendent. Conductors must show their train orders to the flagman; but from not appreciating the importance of such a check, or from the flagman's ignorance, this often falls short of being an adequate safeguard. The same applies to enginemen and firemen, with the added difficulty that the combination of an overbearing superior with a timid or ignorant inferior seems to occur oftener on the engine than at the rear of the train. The rule requiring enginemen and firemen to communicate with each other on sighting fixed signals is claimed to be on most engines a dead letter. Whether there is or is not a rule of this kind in effect on a given road, an engineman who disregards the indication of an automatic signal usually goes undetected. It appears quite certain also that many cases of disobedience of fixed signals near signal cabins go unreported because the signalman, from good or bad motives, omits to inform the superintendent of the fact. Many signalmen, as well as telegraph operators, are young, with moral characters not sufficiently developed to give them the necessary courage to report a fellow employee's delinquency.

A skillful lawyer could make a good argument in support of the assertion that we do not try very hard to find out whether our trainmen obey their instructions. Fifteen or twenty years ago, when the diversity and inconsistency of our train rules was under discussion, a prominent superintendent, who has since risen to a much higher managing position, said to the writer, in substance, that the proposal to make a standard code was not of great importance; the trouble was not in the rules but in getting men to obey them. He might to-day plausibly claim that he was right; that if the energy which has been put into improvements in phraseology on paper had been devoted to the more direct application to enginemen's ears of some of the old-fashioned phraseology that was already available the results would have been better.

Some roads have "schools" for instructing their trainmen in the rules. Since the introduction of the standard code this feature of the service has been made the instrument of much good. But schools for informing the men what the rules mean do not help us at all in finding out whether the men will carry out the rules after they know them. The schools have clarified and increased the men's knowledge, but we can not be sure of any improvement from this source, in mental habit or in conscience. A man's conscience and disposition—his moral character—greatly affect his trustworthiness; that is, they have a bearing on the likelihood that he will perform all of his duties with regularity and freedom from blunder. Why, therefore, should we not make such tests as may be necessary to give some knowledge of the men's consciences and disposition?

Now, is it practicable to watch all these men so as to know just how they conduct themselves; and if it is practicable, will it pay? Taking the last part of the question first, there would seem to be no question that expenditures for perfecting the conduct of conductors and enginemen in the management of trains would be as justifiable as those, for example, which are constantly made for testing the honesty of train conductors and the efficiency and honesty of sleeping-car conductors and porters. The prevention of a collision means preservation of life and the saving of large sums of money; and it also means the strengthening of the reputation of a railroad. The prevention of irregularities in cash and ticket collections merely means a small money saving; the enforcement of neatness and promptness among porters, or of politeness in any class, has to do only with the convenience of passengers; but prevention of collisions affects their lives and essential elements of their happiness. From the standpoint of the thoughtful passenger it must seem utterly ridiculous to constantly watch trainmen to see if their shoes are blacked and their faces shaved, while taking no measures to see whether men charged with the safety of passengers' lives are not daily disobeying some vital rule.

If the pay rolls of conductors and enginemen were increased, for the purpose of

providing an adequate force of inspectors, by as large a percentage as the Pullman Company's pay rolls are thus increased, an immediate and definite improvement could be made in the service. Does any one doubt this? It seems to me that it is self-evident, requiring no demonstration. At all events the Pullman superintendents have systematic records which afford them ground for a definite opinion as to the trustworthiness and efficiency of their men, whereas most railroad superintendents have very fragmentary records, or none at all. Every railroad superintendent knows that in important features the discipline of the Pullman men is far above that of railroad trainmen. Many railroad superintendents, by long acquaintance, know some of their men very well; but it is a matter of personal memory, not an official record. Is not a record worth having? An addition of 3 per cent to the sum paid monthly to conductors and rear brakemen would on most roads afford an inspection of the work of these two classes which would be far ahead of anything that has ever been done, except in a spasmodic way. Even 1 per cent expended in that way would produce tangible results. Can anyone doubt the wisdom of spending a similar percentage also on enginemen and firemen? Or, if doubts exist, can they be attributed to any other source than the narrow purpose of always keeping your expenses down to a certain percentage of the gross receipts? By inspection of enginemen and firemen I mean inspection of those things which road foremen, as now instructed, usually have to neglect or to treat as of secondary importance. In many cases the doubling or trebling of the number of road foremen would make the difference between poor service and good. Inspection of telegraph operators and other classes will produce benefits as definite as in the case of conductors and enginemen, though the results will seemingly be less important because there are fewer operators, and also because their work is less complicated and is already better supervised.

To settle the question whether or not certain measures for the safety of trains will pay, one must have a standard of excellence of service, and be guided by the degree of success with which that standard is attained; for the other side of the account—the aggregate of losses from collisions—is good for nothing for comparison unless we can take the totals for ten or twenty years, including some of the future; and that is out of the question. The best assurance you can have for the future is that your men have been properly taught and are practicing what they have been taught. Having that assurance, and the assurance that the rules are clear and the men clear headed, your conscience need not be disturbed even if collisions do occur. How many superintendents have that assurance to-day? Anyone who feels that he lacks it in a serious degree is bound to consider that the true standard of excellence of service—that is, the standard of safety—is not yet attained. The standard being unattained, he is bound to approve and order any practicable expenditure that may be necessary to attain it. The only reasonable alternative to this is to reduce the speed of all trains to a very low rate. One can never satisfy himself by aiming at anything lower than perfection, for the reason that there is no guide as to how far below perfection the mark should be set; and, also, because even with the best attainable we shall still be below the ideal. This may seem to be a very trite observation, but our collision record has become exceedingly trite; so trite that we are blind to its horrors.

As to the practicability of this inspection there should be little question, for any superintendent can learn by the example of others, if he thinks he needs to learn. Concrete examples are to be found here and there, if one will look around a little. Not every kind of negligence and inefficiency can be ferreted out in a day, or in a month; neither can every inspector's work be proved to be valuable at the first trial; but perseverance will settle these difficulties. The first point to settle is whether any given inspection shall be open or secret. Superintendents who have been most successful in managing their men have employed both kinds. Secret inspection, or, rather, "surprise checking," as the English call it, is as reasonable in connection with train running as with cash collecting. Why not? In either case it is no discredit to the employees whose conduct is already unobjectionable any more than the Government bank examiner's visit is discreditable to an upright bank president. But the superintendent who wants to employ secret inspectors often finds it difficult to get trustworthy and competent men, and he can not keep them long in one district. Therefore it is desirable to have the regular inspectors do every thing in this line that they possibly can. If the regular inspector is the right kind of a man he can do a good deal of semisecret work himself. The superintendent should plainly tell the conductors and enginemen that they are constantly liable to be surprised, and then see that they are surprised. I need not say that only an inspector of good character, first-class judgment, and ample tact is fit for this work.

Surprise checking is needed to test observance of all those rules which have to be carried out where nobody is looking; and the presence of a brakeman with a con-

ductor, or of a fireman with an engineman does not remove this necessity, for a subordinate is usually reluctant to report, or even to advise, a superior.

Examples of some of the things needed are readily suggested by the list of causes which I have already given. Take the most numerous class, forgetting or misreading a train order. In this detail "surprise checking" means the use of orders designedly made wrong or irregular, and a repetition of such a test until the habits of the man tested are found out. In many kinds of clerical work it is universal experience that ability to watch for errors is acquired only by dealing with a large number of actual errors; the expert clerk is the one that has had some hard experience. He has learned in the proverbial dear school. Why should the conductor and engineman, with their gravely delicate duties, escape this schooling? Errors of the kind we are now considering occur so infrequently that potential errors must be manufactured for them. A conductor who will neglect to stop his engineman at a meeting point—the error that is said to have been made at Seneca, Mich.—must be tested by fictitious meeting orders, the engineman cooperating in the testing. An engineman who (under the Chicago and Alton rule, requiring the co ductor to first signal the engineman) neglects to take the initiative in stopping at a meeting point, depending on the conductor to act first, must be called to account for keeping on steam for a single rod beyond the point where the conductor (designedly) neglects to act.

Careless reading of registers is to be cured by calling conductors and enginemen to account for neglecting to report cases where entries on the register are not entirely clear, or where such entries vary in even minor details from the requirements of the rules. Designedly irregular entries must be employed for this purpose as often as may be necessary.

Misreading time-tables is a more obscure difficulty. Practice in a "school," in picking out facts quickly, without error, by which practice a man can learn the nature of his own faults or deficiencies in this respect, would be highly useful. Repeated study of time-tables for a half hour at a time, guided by judicious questions, would be valuable training for a large portion of the enginemen on any road. As a diversion it would not be so attractive to the enginemen as an exercise in formulating train orders, or a discussion in which the dispatcher could be criticised, but it might bring more valuable results. One man will use a pencil to guide his eye down the column, in reading a time-table, and another will not. So trifling a difference as this may make the difference between error and correctness; and will anyone say that it is too trifling a point to receive attention in educating your men? In any work in which surprise tests can not be made to really expose the chances of error the appropriate safeguard is to give men such frequent drills that they can themselves more fully realize the danger of making mistakes. If they are conscientious this knowledge will lead them to try to adopt better routine habits. If they are not conscientious they should not be intrusted with a train.

Neglecting to identify a train that is met has caused some very bad collisions. Does any superintendent doubt that the carelessness which leads to this class of errors could be greatly lessened, if not entirely cured, by testing the men's vigilance occasionally? One prominent Western road requires the men of each train to exchange identifications by word of mouth. At first thought this would seem to be an extreme requirement, involving delay if always obeyed, and leading to looseness of discipline if not strictly carried out; but an officer of that road states that the rule is enforced, and that its working is and has been satisfactory. It has been in force many years, and it has accomplished the purpose aimed at. Is not every superintendent bound to adopt and enforce a rule of this kind, unless he has something that can be shown to be better? Identification by word of mouth (or by any other positive method) necessitates a regular and correct habit on the part of every conductor and engineman. The detection of laxness in this habit is not difficult.

After nonidentification, the next thing in the list is, "passing fixed signal without observing it." This brings up the question of enginemen and firemen shouting to each other at all fixed signals. The rule requiring this is now widely adopted and seems to be looked upon as a useful safeguard; and yet one of the most successful superintendents that I know says he will not have such a rule. He calls it a dangerous division of responsibility. Moreover, there is evidence that the rule is often ignored, or at least is not strictly obeyed. The reader will recall recent discussions on this subject in the Railroad Gazette. I do not propose to reopen the question here, for my subject is not the making of rules, but their enforcement. Whichever view a superintendent may take as to the monitorship by firemen, he is bound to see that the rule that he does adopt is not constantly ignored. If the shouting rule is prescribed, obedience to it must be looked upon as a necessity. If slipshod habits can not be cured without sending road foremen over the road ten times oftener than heretofore, then that is what is required. Is there any escape from the logic of this

argument? Even if a detective fireman has to be put on to test a refractory engineman now and then, the superintendent who determines to enforce his rule must not flinch. The only rational alternative is to revoke the rule.

To explain a collision by saying that an engineman "lost his bearings" does not really explain. There is no true and precise statement of just what the real cause was. Hence this alleged cause need not be considered here. The other causes which I have not considered may also be passed over, for my purpose is not to comprehensively discuss all of the causes of collisions that can be thought of; it is merely to cite a sufficient number or variety to illustrate my argument.

But perhaps I am wasting good paper and misusing the reader's time in going into details even to the limited extent that I have. It can not be that any superintendent is in much doubt as to what defects of practice to look for, or in any perplexity about methods. The question is, Shall there be any inspection at all for the correction of those classes of errors which figure in the collision record? The irregular observations which a superintendent or a train master can make during his trips over the road, valuable as they are in many individual cases, can not reasonably be termed inspections in any proper sense; and the inspections of road foremen are insufficient, for two reasons—first, they do not reach the conductor at all, and, second, the road foreman devotes his chief energies to mechanics and fuel. So the question is, Should there be one, two, six, or a dozen men on a division who should devote their chief attention to promoting strict observance of the train rules?

I have asked this question, and the preceding ones leading up to it, not for the purpose of answering them offhand, but because it seemed worth while simply to formulate the questions. Even if they do not get answered they deserve consideration by reason of the importance of the subject. It is for each superintendent to answer them for himself. For my own part I want simply to record the fact, which does not seem to be well enough known, that one prominent railroad manager in the West does maintain a regular inspection of the conduct of his enginemen in the observance of fixed signals. Regularity is the point that I wish to emphasize. Enforcing obedience to semaphores can not prevent all butting collisions; but I give prominence to this example, because it supports the general principle of surprise checking. The manager referred to does not employ inspectors to inspect and do nothing else; but he does avoid the weakness which results from making an important duty secondary to some other duty, by requiring that inspections be made with sufficient frequency to supply a report for his own use every month. Division officers have tests made all the time—that is to say, they are being made every week—but they are reported to the general headquarters only once a month. Tests are made by the train dispatchers, who go over the road for this purpose and for the purpose of keeping posted in regard to changes; by the chief dispatcher, the train master, the assistant superintendent, and the superintendent himself. Road foremen of engines and some of the men in the signal department are also employed to some extent. Enginemen know that they are tested, but they do not know who does it. The most usual test is to put a certain signal in the stop position at an unexpected time or place and see whether it is obeyed. The frequency of the tests depends somewhat on the density of the traffic. Each report gives all particulars of place, time, train, and names of men. The inspectors also watch the speed of trains and note whether enginemen use too much space to stop a train in; and they report on any detail of practice that may need correction.

The one thing that seems to act as the most constant deterrent with superintendents who are disposed to watch their men is that after a time the worst faults seem to be cured, and inspection appears to be no longer necessary. But, in the language of an experienced manager and president, "the element of carelessness is always creeping into the service," and the only antidote to this is the maintenance of a constant fight against it. Moreover, the superintendent has no guide by which to train his second-best men up to the standard of the best unless the efficiency of all is frequently measured. You impair the efficiency of your inspectors if you let them drop the work and do something else for months at a time. Inspectors can find enough to do if they have the authority. There should be inspectors independent of the train master to see that he is not too easy in putting "slow" men or men of insufficient experience on important trains. Many collisions have resulted from assigning a man to a job with which he is not familiar, or concerning which his knowledge, formerly good, has become rusty, without seeing that he brushes up his knowledge. Conductors and enginemen are constantly tempted to intrust to a subordinate, or to tacitly allow a subordinate to perform, an act which the rules require them to attend to personally. This matter needs constant watching. Looseness in allowing incompetent persons to temporarily perform important duties is common in telegraph offices. "Incompetent" seems a harsh word to employ in this connection, and in many cases its applicability is not positive, but only presumptive,

but when a collision does occur in consequence of the absence of an operator from his office for half a day, the full force of the term appears.

At the beginning I set out to discuss the duties of "the superintendent, the conductor, and the engineman;" but I have given the larger share of my attention to the conductor and engineman. The superintendent, however, will not complain of any neglect of his part of the case, for I have addressed myself chiefly to him. As a final word I may perhaps venture to caution him not to expect to be able to introduce additional safeguards without disturbing anything. Every good thing costs something, and good discipline is no exception. I am not now speaking of the money expenditure, but of changes in the service. We do not get the benefit of the air brake without spending valuable time in tests and inspection of apparatus. We can not have a large force of good men constantly available without spending much time and effort in the management of a separate class of men in a condition of apprenticeship. Obedience to signals can not be insured without sometimes delaying trains. Men can not be kept reasonably vigilant without sometimes requiring what sometimes seems to be excessive caution. One road in the West requires freight trains (and many other trains) on single track to get a clearance or a train order from every telegraph office. (There are exceptions to the rule, and it does not apply where the block system is in force; still it is a much-used rule.) Such a rule is a definite safeguard and has, no doubt, prevented collisions; but it costs some time and money, and much care. I do not here dicuss the merits of the rule, but simply cite it as an example of securing safety at the cost of some inconvenience.

I have said that our safeguards against butting collisions have not lately been improved except in one particular. That exception is the spread of the block system. Many roads have adopted the space interval on single-track lines, and, of course, without any additional expense, they provide against butting as well as against rear collisions. There can be no question that the adoption of this system has prevented many butting collisions, though no records are available. Some managers have made comparisons of a series of years before the change with other years after it, showing a marked and gratifying result; but this is a kind of record that is not often allowed to be published. It is also to be said that the money saving is probably much larger in the item of rear collisions than in butting; but the comparisons usually lump the two together. No one, however, doubts the main fact. The block system is a great safeguard, because it takes from the conductors and enginemen the responsibility of reading time-tables, adding and subtracting minutes, deciphering poorly written telegrams, carrying out flagging regulations, and studying partially understood rules on various points, and substitutes for this a force of signalmen, situated at fixed points and making the safety of trains their chief and often their only duty. The block system greatly increases safety even if there be no improvement in the men or in their discipline. The reader will recall a recent instance where a railroad company which suffered a great loss by a butting collision soon afterwards ordered the adoption of the block system on several hundred miles of single-track line.

But the block system does not make discipline unnecessary, and in recognizing the great value of the principle, and the enterprise of the railroad companies that have adopted it, I do not mean to modify anything that I have said concerning the importance of inspection and the need of improvement in discipline in every direction where improvement is possible. If the manual block system is used there is need of a high mental and moral standard in the signalman. An age limit and an experience limit should be rigidly maintained, and a regular signalman should not be off duty a single minute without putting in his place a substitute whose competency has been as thoroughly tested as that of the regular man himself. There has been a good deal of evidence that railroads of pretty high reputation have employed and do employ signalmen who lack either years or experience, and sometimes both. The term "experience" when used of the incumbent of an important railroad position should mean, not merely a number of years engaged in a certain kind of work, but a term spent in such work under surveillance, and of which there has been periodical examination or record. One man acquires as much knowledge by one year's experience as another does in three years. This difference should be a matter of precise record, not merely the personal impression of the superintendent or train master.

With automatic block signaling (and, to a less extent, with manual signals also) there is need of the "surprise checking" already alluded to. With or without the block system, a great improvement in inspection is necessary in the American railroad service to bring it up to a reasonable standard of safety. As mentioned in a foregoing paragraph, the railroads of England make a record far and away beyond ours as regards the security of both passengers and trainmen. The railroads of America could almost take lessons, in the matter of safety from accident, from a powder mill. At Ardeer, Scotland, there is a nitroglycerin factory, employing 1,300 persons and

making 100 tons of explosives weekly, where, according to a writer in McClure's Magazine, the number of fatal accidents in twenty-five years has been only 21, or less than 1 in 1,300 yearly. It would be mortifying to compare this record with the fatal accidents to the trainmen of our railroads. This almost incredible record is attributed mainly to "the admirable character of the discipline imposed and the firm and careful system of management," though rigid inspection by the Government is also mentioned. Evidently the proprietors of this factory do not follow the method which one American railroad president confessed had been followed on his road—that of adopting well-known safeguards immediately after a disaster (collision) had called attention to the need of them. The number of employees at Ardeer is 1,300. If 1,300 American freight trainmen were to be employed in a territory as small as the few hundred acres occupied by the nitroglycerin works, and if they were to be killed and injured as rapidly as they are at present, the public would be so shocked that heroic measures for their safety would be forced without delay through Government action or in some way. But, of course, the desirability and importance of remedial measures would not be a whit greater than is the case now.

Herbert Spencer, in one of his recent essays, says: "Do not suppose things are going right till it is proved they are going wrong, but rather suppose they are going wrong till it is proved they are going right." This he terms a "business principle." The adoption of this business principle in the management of train movements will reduce the frequency of the occasions on which it is necessary to comply with the legal principle, now being vigorously applied everywhere, that a railroad must pay from $50,000 to $500,000 to victims, lawyers, and others every time it has a big collision. This is a pretty sound principle, but men call it sound because they base it largely on the belief that it is a powerful incentive to the adoption of preventive measures, and every railroad officer is justified in doing all he can to make the principle a dead letter by abolishing the occasions for its application.

"FORTY-ONE REAR COLLISIONS."

COMMENTS ON ACCIDENT BULLETIN NO. 3: FROM AN ARTICLE IN THE RAILROAD GAZETTE, AUGUST 22, 1902.

In our issue of July 18, on the first page, we published a discussion of the causes of butting collisions, the text being the Government report (Bulletin No. 2) for the three months ending December 31 last. The Interstate Commerce Commission has now (Bulletin No. 3) furnished the material for an equally instructive study of rear collisions. In Bulletin No. 2 the butting collisions, costing over $2,500 each, numbered 27, with 70 persons killed, 234 injured, and a total loss (cars, engines, and structure) of $306,511. In Bulletin No. 3 all of the rear collisions, costing over $2,000 each, are brought together in a similar list. They number 41; total number of persons killed, 43; of injured, 225; and total cost, $160,247. The statement of causes is as varied and interesting as in the former case, and, as stated in the bulletin, a similar list for both classes of collisions, rear and butting, could have been made. The emphasizing of one kind one quarter and the other kind the next is not to be taken as an indication that there is any marked falling off in either kind either quarter.

An analysis of the present list gives the following:

Causes of 41 rear collisions.

	References.[a]
1. Neglected to flag	12, 13, 17, 19, 20, 22, 24, 36
2. Improper flagging	5, 6, 9, 27, 33, 39, 40
3. Improper flagging and too high speed	10, 23, 25, 35
4. Flagman failed to use torpedo	8
5. Weather thick; flagman could not be seen	3
6. Misplaced switch	4, 18
7. Approached station at uncontrollable speed	11, 21, 28
8. Approached station at uncontrollable speed and neglected five-minute rule	26
9. Approached water station uncontrollable	1
10. Engineman exercised poor judgment	7
11. Engineman failed to keep a good lookout	14
12. Engineman asleep	15
13. Too high speed	32
14. Runaway train	16, 34, 41
15. Block signal wrongfully cleared	2, 30, 31
16. Failure of automatic block signal	29
17. Overlooked train on time table	37
18. Disregarded block signal	38

[a] References to numbers in column headed "G" in table in Railroad Gazette, August 1.

It goes without saying that any superintendent who should have occasion to investigate such a list as this on his own road would at once stir himself up to change things. We may go further and say that any superintendent who should study this record in detail, and with his own men's records before him, would also be disposed to take up anew the question of the prevention of such episodes in his own record. A record covering 200,000 miles of road is, to be sure, somewhat vague. The percentage of lapses may be small. You still have the assurance that your share is very small. But in spite of all that, a full account of each one of these collisions reported (to say nothing of the hundreds which are mentioned only in the totals of the bulletins) would remind a railroad officer forcibly of similar misconduct and failure among his own men. And we need not say that any superintendent, whenever he has this subject vividly before him, feels the need of taking vigorous measures to grapple with it.

One of the roads which was responsible for one of the butting collisions in the former list soon afterwards gave out that the block system was to be adopted on several hundred miles of its lines. Another road that had a bad butting collision in February at once took up the question of the adoption of the block system on that division where the collision occurred. Both these roads already had the block system in use on other parts of their lines, so that the merits of the system can not have been unknown, but concrete examples seemed to be required to arrest the attention of the president or directors or some other authority. This being the case, we feel that we shall be doing many railroad officers a good service by calling especial attention to the exhibit made by this bulletin.

For no less than 21 of the collisions in the list—all those tabulated in the first five lines of the table above—equal to more than half of the whole, it may be declared that the block system would have been an absolute preventive; and the same is presumptively true of those in the ninth, eleventh, twelfth, and seventeenth lines. Wherever the fault lies with the flagman, the establishment of fixed points—block signals—at which the engineman must be prepared to stop, with the correlative fact that he need not stop at any other point, cures the difficulty. In cases of approaching a water station at uncontrollable speed it almost always turns out that dependence was placed on a guess that the foremost train had got out of the way; the block system cures this guessing. We do not say that it makes guessing impossible, but it is a matter of fact that the cure is effected. Failing to keep a good lookout (eleventh line, No. 14) and going to sleep on the engine are not impossible with the block system, but the block system does substantially clear the record of items of this class, or clears it within a small fraction of 1 per cent, and the results are all that anyone expects. The seventeenth item (No. 37) represents a cause that is positively done away with if the block system is adopted in its complete and perfect form, for with the block system there is no need of any time-table whatever. Any train getting the right to the road keeps it, regardless of its class, until it reaches the next station, whether it be five minutes or five days in getting there; and no work train, or empty engine, or switcher thinks of trying to take that right from its possessor except through the block-signal man.

The fifteenth and sixteenth items we will take up presently. The eighteenth represents a dereliction which belongs in the same class with many of those found in Bulletin No. 2 (butting collisions). The need of inspection and discipline is equally obvious in both cases. This collision (No. 38) is the one case out of the whole 41 in which it is clear that the block system did not prevent the engineman from being fatally negligent. By referring to the bulletin, where this engineman's negligence is remarked upon, the reader will see that the collision was not due to any fault in the block system.

The fifteenth and sixteenth items (cases 2, 30, 31, 29) are the most significant in the table, as they represent failure to attain safety even after the most important measure of safety, the block system, has been adopted. The automatic block signal failure represents a danger which every road using such signals is, doubtless, endeavoring with constant faithfulness to do away with. At any rate, every signal engineer that we know is studying his problems with energy, and seems to be determined to make his record perfect just as soon as it is possible to do so. Managers seem to be equally persistent in demanding the highest possible attainments in mechanical and electrical features, and in inspection and care. But in cases of manual block signals wrongfully cleared we can not find ground for such a hopeful view. It is only too evident that lapses of conduct in this department are directly connected with looseness of discipline or lack of thorough training. As everybody knows, the substitution of the block system for the time interval greatly enhances safety, even when the personnel is not simultaneously improved; and enough collisions have already occurred, as the records of the Railroad Gazette since 1890 show, to make it plain that some roads have been satisfied to effect this partial improvement. They have

adopted the better system, but have not bettered their men. A few roads have adopted "lock and block," thus providing by machinery against some of the errors of the signalman's brain; others, not doing this, have tried to get better men or to make better signalmen out of the men they have; but in the third and larger class of roads we find that neither one of these improvements has been taken up. We do not need to repeat here the arguments which have already been published on this point, for they are well known. The principal ones may be found in the article of July 18, on butting collisions. As remarked in that article, there is no warrant for relaxing efforts at improvement of the discipline just because you have adopted the block system. Admitting the great improvement that has been made in the safety record of many roads by the abandonment of the time interval on large portions of their lines, the fact remains that we shall not come anywhere near the records of our friends in England unless we make improvement in other directions. Five collisions under the block system in three months means twenty in a year. And two things are to be remembered, seven-eighths of our railroad mileage is not worked under the block system, and so is not to be considered in averaging the record per mile of road; and the report under consideration omits cases causing less than $2,000 damage. A complete record would multiply our total by a figure of considerable size.

One item in the record (No. 14, runaways), covering three collisions, costing $21,900 and three lives, represents a cause with which the block system has nothing to do. Here again it is to be remembered that the record is not complete, the cases costing less than $2,000 each would, no doubt, materially increase the total in a year. This article has been devoted chiefly to preaching the block system, and it is long enough already; so we shall not enlarge on the subject of runaways. Possibly the only comment necessary is to call attention to the record itself. Insufficient brake power and overworked and inexperienced trainmen make three counts, which every railroad manager already well understands. The importance of having the air brake on all cars and using it is one of our old sermons; but here it is impressed in the concrete, with $5,000 and $14,000 penalties. Giving trainmen plenty of rest seems to be well enough understood when there is a discussion with a grievance committee; but as long as the men can get partial relief by sleeping in the caboose on the road everybody seems willing to swallow his principles and go in for a big car-movement record. Putting green brakemen on steep grades, where the oldest of the trainmen occasionally find use for all their wits, is such a risky proceeding that were it not for the record before us we should hardly think it necessary to argue against such a course. And on a double-track road nearly every runaway train endangers, if it does not wreck, one or more passenger trains.

DECISION OF UNITED STATES CIRCUIT COURT ON DEFECTIVE SAFETY APPLIANCES.

VOELKER v. CHICAGO, M. & ST. P. RY. CO.

(Circuit court, N. D. Iowa, E. D. June 16, 1902.)

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1. Injury to Employee—Negligence—Pleading—Defective Car Coupler.
   Two acts of negligence as causes of the accident, one being the use of a car on which the coupler was in such condition that it would not work properly and couple by impact, are charged by a petition which at length describes the faulty condition of the coupler, avers that its condition was due to defendant's negligence, and made it necessary for plaintiff's intestate to go between the cars, and that, while there, other cars were negligently kicked against the cars to be coupled, causing him to be crushed.
2. Same—Statutes—Pleading.
   That the statute may avail plaintiff, it is not necessary or permissible that the petition in an action for injury from a defective car coupling cite or refer to act Cong. March 2, 1893, relative to couplings on cars used by carriers in interstate commerce.
3. Same—Right to Benefits.
   Though an employee, in an action for injury from defective car coupling, does not, by his argument or otherwise, indicate that he is relying on act Cong. March 2, 1893, relative to couplings on cars of carriers engaged in interstate commerce, the court may and should instruct as to his rights thereunder.
4. New Trial—Surprise.
   Though defendant was taken by surprise by the court's calling the attention of the jury to a statute, this is not ground for new trial, it having made no request when the court, at the end of the charge, inquired whether there was any point or matter as to which instruction was desired, and it not being shown or claimed that defendant has evidence which will change the facts on which the court held the statute was to be considered.
5. Same.
   Defendant having known the condition of a car coupler was an issue of fact in the case, and the question of its actual condition having been thoroughly gone into, and evidence having been introduced by both parties, it can not have a new trial on the theory that if it had foreseen the court was going to cite a statute on the question of the legal obligation resting on it as to couplers it might perhaps have had further evidence on the question of fact.
6. Instructions—Pleadings and Evidence.
   Though a petition in action for injury from a defective car coupling does not allege that the car was used in connection with interstate commerce, the fact appearing in the evidence, the court may instruct that act Cong. March 2, 1893, is applicable.
7. Master and Servant—Car Couplers.
   Act Cong. March 2, 1893, requiring cars used in moving interstate commerce to be equipped with couplers coupling automatically, applies to a car designed for interstate traffic, though at the time being hauled empty.
8. Same—Proximate Cause—Concurrent Causes.
   Failure to equip a car with a coupler coupling automatically, by reason of which a car coupler was obliged to go between the cars, where he was crushed, is a proximate cause of the accident, though the cars were forced together by the negligent kicking of other cars against them.
9. Same—Car Couplers.
   A carrier, by permitting couplers, originally sufficient, to become worn-out and inoperative, is within the prohibition of act Cong. March 2, 1893, against using cars in interstate commerce not equipped with couplers coupling automatically.

10. Same—Assumption of Risk—Instruction.
    It must be shown that an employee, claimed to have assumed the risk of the manner in which work was done, knew, or had means of knowing, how it was done; and an instruction that, if it was the custom to do the work as it was done when he was injured, he assumed the risk, is properly refused, no reference being made to knowledge or means of knowledge.
11. Same—Custom—Applicability.
    The question of the custom of kicking back cars, under ordinary circumstances, without notice, is immaterial, but that of ordinary care under an exceptional situation is presented where the first cars kicked down did not, by reason of a defective automatic coupler, couple to the standing car, but separated from it a few feet, and deceased went between them to manipulate the coupler, and other cars were kicked back, crushing him; and it was claimed that the circumstances were sufficient to show the other members of the switching crew that the first coupling had not been made, and that he had gone between the cars.
12. Death—Excessive Damages.
    Verdict for $9,000 for death of a man 29 years old, with a life expectancy of 35 years, he being sober, industrious, and of good habits, and earning from $75 to $78 per month, is not so excessive as to justify reduction.
13. Pleadings—Amendments—Variance.
    Under Code Iowa, sec. 3597, making variance immaterial where the adverse party was not actually misled to his prejudice, and providing for amendment only where such party was so misled, plaintiff need not file an amendment to petition, because of variance, where defendant is estopped to say that it was misled thereby.

Submitted on motion for new trial filed on behalf of the defendant.
McCarthy, Kenline & Roedell, for plaintiff.
W. J. Knight, for defendant.

Shiras, *District Judge:*

This case came up for trial at a former day of the term before a jury, and it then appeared that the plaintiff was the administratrix of the estate of Emil Voelker, and in that capacity had brought this action against the defendant railway company to recover damages for the death of Emil Voelker, which had been caused by his being caught between two cars in the yards of the defendant company at Dubuque, Iowa, on the 9th of September, 1901, while he was in the employ of the company as a switchman. The evidence showed without contradiction that the defendant company, on the 8th day of September, brought a loaded freight car from Spalding, Ill., through Savanna, Ill., to Dubuque, Iowa, the train of which the car formed part reaching the yards at Dubuque about 4 o'clock in the afternoon; and on the next morning the switching crew to which Emil Voelker belonged went to work in the yards, under charge and direction of Mr. Allgeyer as foreman. The car in question was then on what is called the "east freight track," and the switching crew undertook the work of sending down upon this track and coupling to the standing car other cars brought from the main line, which were taken by the locomotive easterly upon the main line beyond the switch connecting the east freight track therewith, and then, by a backward movement of the engine, the cars were kicked down on the east freight track. By the direction of the foreman, Voelker rode down upon the first set of cars thus kicked back for the purpose of coupling them to the standing car, and while engaged in endeavoring to fix the coupler upon the standing car so that it would couple with the other cars he was crushed between the cars, receiving injuries which resulted in his death. The evidence proved clearly that the coupler on the standing car was out of order to such an extent that it would not couple automatically or by impact with the other cars, and the evidence justified the finding that when Voelker discovered that the coupler was out of order he immediately undertook to fix it so the coupling might be made, and while so engaged he was caught between the cars and received the injuries causing his death. Upon the trial of the case the jury returned a verdict in favor of the plaintiff, the damages awarded being $9,000, and the defendant now moves for a new trial on various grounds.

In the charge of the court the jury were instructed that if the evidence proved that the car in question was brought by the defendant company from a point or station in Illinois to Dubuque, Iowa, then the company, in handling the same, was engaged in interstate traffic, and was subject to the provisions of the act of Congress approved March 2, 1893, and entitled "An act to promote the safety of employees and travelers upon railroads, by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with drive-wheel brakes, and for other purposes" (27 Stat., 531). In support of the

motion for a new trial it is earnestly contended that neither in the allegations of the petition nor in putting in the evidence did plaintiff base the case on the provisions of the act of Congress, and that the defendant was wholly taken by surprise by the action of the court in instructing the jury with respect to the duties imposed upon the company as a common carrier engaged in interstate traffic by the provisions of this act. The general rule invoked by the defendant that a plaintiff, to recover, must bring his proof within the allegations of his petition or declaration is not questioned, but the real inquiry is whether there was such a departure between the case declared on in the petition and the case made by the evidence that the latter will not fairly support the former. Turning to the petition, we find it therein stated:

"That on September 9, 1901, there was, among others, upon said track a loaded car, which was to form a part of a train then being made up by defendant's switching crew for early movement, under the orders and directions of defendant's yard master and foreman of said switching crew; that unknown to plaintiff's intestate, Emil Voelker, who then was employed as car coupler and field man of said switching crew, defendant negligently permitted the coupler on the northerly end of said car to become and remain inoperative and defective in that the link connecting the lever and the pin was loose, broken, and disconnected, so that the pin and coupler could not be operated by means of the lever, and the said coupler was so old, worn, and rickety that the pin could not be raised because of the tumbler pressing and resting against the frame of the coupler, thus making it necessary, in order to operate the coupler, to go between the cars, insert the hand in the coupler, push the tumbler away from the frame, and then raise the tumbler and pull the knuckle open; * * * that by reason of the inoperative and defective condition of the coupler aforesaid said Emil Voelker was unable to make the coupling, and the knuckles on both couplers being closed, no coupling was made when the cars bumped together, and the cars separated a few feet on account of the jar; that thereupon, as was his duty and the usual practice, said Emil Voelker went between the cars to open the knuckle, in order that the coupling might be made by impact, and while thus engaged and unaware of the danger to which he was exposed, said switching crew, while acting within the scope of their employment, and knowing that said Emil Voelker went between said cars to couple the same, negligently caused two or more other cars to be kicked with great force onto said east freight track and against the cars between which said Emil Voelker was thus occupied, thereby causing said Emil Voelker, without any fault on his part, to be crushed to his death between the drawbars on said cars; that defendant and its said employees, without fault of said Emil Voelker, negligently and carelessly moved said cars as aforesaid while he was thus engaged without signal from him, although the general practice then and long prior thereto required that said cars be not moved while he was thus occupied between the cars without signal from him, and he believed that said practice would be followed while he was so engaged in the performance of his employment; that defendant knew, or by the exercise of ordinary diligence could and should have known, of the defective and inoperative condition of the coupler aforesaid before the death of said Voelker, and in time to have remedied the same."

It is claimed on behalf of the defendant that the facts thus recited in the petition were intended to charge only one act of negligence, to wit, kicking back the cars without giving any notice or warning, when it was known to the other employees that Voelker was between the cars and therefore in a place of danger. The merest cursory reading of the petition shows that such could not have been the thought of the pleader in preparing this petition. Had it been the purpose to make only one charge of negligence, based upon the manner in which the second set of cars were kicked back, it would only have been necessary to aver that Voelker while engaged in the line of his duty in preparing the coupler upon the standing car was called upon to place himself on the track at the end of the car, and was thus caught by the other cars; but instead of limiting the averment of facts to this statement in substance, the pleader at considerable length described the faulty condition of the coupler, avers that its condition was due to the negligence of the company, and that its faulty condition was what caused Voelker to place himself in a position where he was liable to be caught if the other cars were moved down in order to make a coupling. Properly construed, the petition charges two acts of negligence as the causes of the accident, not taking into consideration the charge of negligence in the use of a road engine for switching work; and certainly the allegations of the petition were sufficient to give notice to the defendant that it was charged with negligence in that it was using a car upon which the coupler was in such condition that it would not work properly, and would not couple by impact. Upon the trial both parties introduced evidence upon this matter of the condition of the coupler, and much time was taken up in the introduction of testimony upon this point, and there is, therefore, no sufficient

foundation upon which to base the claim that the defendant was not duly warned of the fact that the condition of the coupler was an issue in the case as one of the grounds upon which it was charged with negligence.

It is said, however, that the defendent was taken unduly by surprise, in that the court, in the charge to the jury, cited the provisions of the act of Congress of March 2, 1893, as applicable to the case, it being claimed that neither in the pleadings nor in the argument of counsel for plaintiff was any reference made to the act of Congress. As matter of pleading, it certainly can not be said that, in order to base a right of recovery on the provisions of the statute, it was necessary to cite the statute or its provisions in the petition. The petition in set words charged the defendant with negligence in having and operating a car upon which was a defective, worn-out, and inoperative coupler, which would not couple by impact. Charging the defendant with negligence was charging that the company had not met or fulfilled the duty imposed upon it by law with respect to having and keeping the coupler upon the car in proper condition for use. It was not necessary nor, indeed, permissible, under the rules of pleading, that the petition should set forth the law which had been violated. It is not for one moment supposable that the officers of the defendant company, or the learned counsel representing it in this case, are not, and were not when this action was commenced, fully aware of the provisions of the act of Congress of March 2, 1893, and of the acts of the general assembly of the State of Iowa which now form sections 2079 to 2083, both inclusive, of the code of the State, and therefore knew that as to cars used in interstate traffic the obligations of the act of Congress were in force, and as to cars used within the State of Iowa the named sections of the code were applicable. Therefore when the petition charged the defendant with negligence with respect to the coupler upon the car, the defendant must have known that, as the car was used in interstate traffic, the act of Congress would necessarily come into consideration in defining the obligations resting upon the defendant company. It is true, as urged by counsel for the defendant, that in the argument of the case on behalf of the plaintiff no reference was made to the act of Congress. In fact, counsel did not discuss the law at all in their argument. They addressed the jury only, and if it be true that the line of argument to the jury would indicate that counsel were relying on common-law rules only, yet certainly that did not prevent the court from calling the attention of the jury to the provisions of the act of Congress if properly construed it had a bearing on the case. No matter what the views of counsel are upon the law of the case as expressed in their arguments, it is the duty of the court to give to the jury the law applicable to the facts as the court understands it. If the law as given to the jury is applicable to the facts before them, no error is committed. If the law, as given, is not applicable, that is error, and cause for reversal; but the applicability of the law given is not dependent on the views of the counsel as expressed or omitted to be expressed in their argument before the jury.

But admitting to the fullest extent the claim now advanced that the counsel for defendant were taken by surprise by the action of the court in calling to the attention of the jury the named act of Congress, is this matter of surprise any sufficient reason for granting a new trial? At the close of the charge to the jury the court, following its usual custom, inquired of counsel whether there was any point or matter touching which counsel desired the jury to be instructed which was not covered by the charge as given. The opportunity was certainly given to the defendant, if it has been misled as to the issues in the case, to have then called the attention of the court thereto, and asked leave to introduce further evidence, if that were necessary, or to be heard upon the questions of law, which had not been presented in argument. No such requests were made, and the case went to the jury under the instructions as originally given. Furthermore, it is not now shown or claimed that the defendant has evidence at command which would change the facts upon which the court held that the act of Congress was to be considered in determining the legal obligations resting upon the defendant. It is not claimed that upon a new trial it would be shown that the defendant company was not engaged in interstate traffic as a common carrier, or that the car with the defective coupler was not a loaded car, brought by the defendant from a station in Illinois into the State of Iowa. In the written brief submitted by the defendant in support of the motion for a new trial it is said:

"Had defendant known that it was to be contended that it had violated the act of Congress, it could have prepared its case to meet such contention, and perhaps would have produced evidence to show that the act of Congress had not been violated because of the then condition of the coupler on the car. At all events, it ought to have been given an opportunity to do so, if it could."

The question of the actual condition of the coupler was thoroughly gone into before the jury, and evidence was introduced by both parties on this issue. The defendant well knew that the condition of the coupler was an issue of fact in the case and had full opportunity to introduce all the evidence at its command on this point, and it certainly is not entitled to a new trial upon the theory that if it had been foreseen that the court was going to cite the act of Congress upon the question of the legal obligation resting upon the defendant, it might perhaps have had further evidence on the issue of fact. The defendant well knew the significance in the case of the question about the condition of the coupler and undoubtedly brought forward all the evidence available to it on that question. Under such circumstances it can not be supposed that the court would be justified in granting a new trial upon the bare statement that perhaps it might be shown that the condition of the coupler was not in violation of the act of Congress.

It is next contended that it was error on the part of the court to call the attention of the jury to the provisions of the act of Congress, because it was not averred in the petition that the defendant had hauled or permitted to be used on its lines the car in question, or that it was hauled or used in connection with interstate traffic. When it became the duty of the court to instruct the jury upon the law, it clearly appeared in the evidence that the car in question, being loaded with coal, had been brought from Illinois to Iowa. It was left to the jury to find the fact, under the evidence, whether the car was brought by the defendant company from the one State into the other, the jury being instructed that if they so found, then the defendant in so transporting the car was engaged in interstate traffic, and in such case the act of Congress would be applicable to the case. Would it not have been error under these circumstances if the court had instructed the jury that the act of Congress had no relation to the case before them? Is it not true that a railway company is engaged in interstate traffic within the meaning of the act of Congress when it brings loaded cars from one State into another? But it is said that—

"It was a mistake to instruct that if the jury believed the car was brought from Illinois to Iowa, then defendant, in transporting it, was engaged in interstate commerce. This, we submit, would be an assumption of the fact to be alleged and proved—i. e., that the car had been used in moving interstate commerce."

If by this contention it is meant to assert that in order to come within the purview of the act it must be shown that at the time of the accident the car was loaded with freight which had been brought from another State, the answer is that the evidence proved such to be the fact in this case. But further, that is not the proper construction of the act. The statutes, State and Federal, requiring railway companies to equip their cars with automatic couplers were not enacted to protect the freight transported therein, but for the protection of the life and limb of the employees who were expected to handle these cars. The beneficent purpose of these statutes is defeated if the employees are required to handle cars not equipped as required by the statutes, without regard to the question whether the cars are loaded or not. Legislation on this matter of the use of automatic couplers was sought and obtained from Congress, as well as from the State legislature; so that the companies would not be afforded a loophole for escape from liability on the theory that the agencies used in interstate commerce are without the control of the State legislation. When companies, like the defendant in this case, are engaged in interstate traffic, it is their duty, under the act of Congress, not to use in connection with such traffic cars that are not equipped as required by that act. This duty of proper equipment is obligatory upon the company before it uses the car in connection with interstate traffic, and it is not a duty which only arises when the car happens to be loaded with interstate freight. It frequently happens that the railway companies load cars with live stock or farm produce in the Western States and carry the same to the Eastern markets, and then return these cars without a load; but it can not be true that on the eastern trip the provisions of the act of Congress would be binding upon the company because the cars were loaded, but would not be binding upon the return trip because the cars are empty. Whatever cars are designed for interstate traffic, the company owning or using them is bound to equip them as required by the act of Congress; and when it is shown, as it was in this case, that a railway company is using the car for transportation purposes between the two States, sufficient is shown to justify the court in ruling that the act of Congress is applicable to the situation.

It is next assigned as ground for a new trial that "it was error to leave it to the jury to find that the condition of the coupler was a proximate cause of the injury," it being claimed that the allegations of the petition and the evidence show that the alleged negligent kicking of the cars was the proximate and sole culpable cause of the injury. As already stated, the petition sets forth the faulty and inoperative condi-

tion of the coupler as one of the grounds of negligence charged against the defendant, and the evidence made it one of the vital issues in the case; but it is argued that, even if, through the negligence of the company, the coupler was inoperative and in bad condition, this condition of the coupler was not a proximate cause of the accident, because Voelker would not have been crushed if the other cars had not been kicked back, and therefore the latter act must be deemed to be the sole and proximate cause of the accident. If this line of reasoning is to be followed it would result that the act of kicking the cars back could not be deemed to be a proximate cause of the accident, no matter how negligently they were handled, because the mere movement of the cars would not produce injury unless some one got in the way thereof, and, as the accident would not have happened if Voelker had not gotten upon the track, therefore the proximate and sole cause of the accident was the act of Voelker in going upon the track, and therefore neither the negligence of the company in using a car upon which the coupler was out of order, nor the negligent manner in which the cars were kicked back, could be relied upon as creating a cause of action against the company. The statutory requirement with respect to equipping cars with automatic couplers was enacted in order to protect railway employees, as far as possible, from the risks incurred when engaged in coupling and uncoupling cars. If a railway uses in its business cars which do not conform to the statutory requirements, either because they never were equipped with automatic couplers, or because the company, through negligence, has permitted the couplers, originally sufficient, to become worn-out and inoperative, then the company is certainly not performing the duty and obligation imposed upon it by the statute, and is clearly, therefore, chargeable with negligence in thus using an improperly equipped car; and the company is bound to know that if it calls upon one of its employees to make a coupling with a coupler so defective and inoperative that it will not couple by impact, and that to make the coupling the employee must subject himself to all the risks and dangers that inhered in the old and dangerous link-and-pin method of coupling, it is subjecting such employee to the very risk and danger which it is the purpose of the statute to protect him against, so far as that is reasonably possible. Subjecting an employee to risk to life and limb by calling upon him to use appliances which have become defective and inoperative through the failure to use proper care on part of the master is certainly negligence, which will become actionable if injury results therefrom to the employee, and liability therefor can not be avoided by the plea that if the company was thus guilty of actionable negligence in this particular it can not be held responsible therefor because it was guilty of another act of negligence which aided in causing the accident. This accident happened because Voelker, in the performance of his duty, was called upon to place his person in a position where he might be caught between the cars he was expected to couple together. He was required to place himself in this dangerous position because of the negligent failure of the company to have upon the car a coupler in proper and operative condition, and certainly this negligent failure of the company was a proximate cause of the accident.

It is also contended that the court erred in not giving two instructions asked by the defendant to the effect that if it was the general and uniform custom in the yard to kick cars down to a "field man," so called, without giving him any notice or warning, and Voelker remained working in the yard while this custom was observed, then there could be no recovery for any injury done him because of the kicking of cars to him without giving him notice or warning that it was to be done. The instructions as asked are open to the criticism that no reference is made to the knowledge or means of knowledge on part of Voelker. When the claim is made that an employee has assumed the risk caused by the manner in which the business of the master is conducted, it must be shown that the employee knew, or had means of knowing, the manner in which the work was done, so that the inference may be fairly drawn that by continuing in the employ of the master, having knowledge or its equivalent of the risks to which he would be subjected, he intended to assume such risks. But, waiving this objection, the instructions as asked were not applicable to the issue of negligence charged in the petition, and which there was evidence to sustain. The defendant introduced evidence to the effect that it was expected that the field man would look out for himself, and that it was not the rule or custom to give him warning when cars were about to be kicked back in the direction of the field man; and doubtless this is true under ordinary circumstances. Thus, if the cars which Voelker rode down had coupled with the standing car, it might well be that other cars could have been safely sent back without giving him notice or warning, and he could readily have protected himself from danger caused thereby. But the fact was that the first cars sent down did not couple to the standing car, and the claim of the plaintiff is that when the cars struck, and the coupling was not made,

they separated some few feet, and then Voelker undertook to manipulate the coupler so that it would couple, and while he was thus engaged, without any signal from him and without any notice to him, another set of cars were kicked back, resulting in again forcing the cars together and crushing Voelker between them. The claim of the plaintiff and the issue presented by the facts was that the circumstances were sufficient to show that the expected coupling had not been made, and that Voelker had disappeared from the sight of the other members of the switching crew, evidently because he had gone between the cars, and therefore it was the duty of the others not to throw back another set of cars until they had received a signal from Voelker showing that it could be done with safety. The case did not make material the question of what the custom or practice was with respect to kicking back cars under ordinary circumstances, but did present the question whether ordinary care had been exercised in view of the exceptional situation created by the use of a defective and inoperative coupler, which resulted in a failure to couple the cars by impact, and required Voelker to place himself in a position of danger.

It is finally urged that the amount of damages awarded is excessive, and is not sustained by the evidence. It was shown that the deceased was 29 years of age at the date of his death, and his expectancy was 35 years; that deceased was sober, industrious, and of good habits, and was earning from $75 to $78 per month. At the former figure he was earning $900 per year, which rate of earning, continued for thirty-five years, would make the aggregate sum of $31,500. The jury awarded as damages the sum he would have earned in ten years, and the court can not say that this sum is excessive. It is a liberal allowance, but not so excessive as to justify the court in reducing the same.

Counsel for plaintiff has asked leave to file an amendment to the petition in case the court should hold that the allegations of the petition were lacking in any substantial particular, the application for leave to amend being based upon the provisions of section 3597 of the code of Iowa, which enacts that—

"No variance between the allegations in a pleading and the proof is to be regarded as material unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be shown by proof to the satisfaction of the court, and such proof must also show in what respect he has been so misled, and thereupon the court may order the pleading to be amended upon such terms as may be just."

Amendments of this character may be allowed after verdict and judgment have been entered. (*Davis* v. *Railway Co.*, 83 Iowa, 744; 49 N. W., 77.) Under the provisions of this section, in order to obtain a reversal of a judgment or a new trial on the ground of a variance between the allegations of a pleading and the proof, it must be proven to the satisfaction of the court that the party has been misled to his injury. Such proof has not been made in this case. As already set forth, if the defendant, when the charge was given to the jury, had then claimed that there was a material variance between the allegations and the proof offered, in the view taken thereof by the court, the situation could have been properly dealt with. The defendant did not then suggest that there was a variance between the allegations of the pleading and the evidence introduced, nor did the defendant suggest that it had been in any way misled with respect to the issues involved in the case or that it was taken by surprise by the charge of the court with regard to the issues involved in the controversy. Under these circumstances the defendant can not now be heard to say that it was misled by the action of the court or by any variance between the allegations of the petition and the evidence introduced, and therefore there is no need for filing an amendment on behalf of the plaintiff.

The motion for new trial is overruled and judgment will be entered on the verdict in favor of plaintiff.

APPENDIX E.

STATISTICS OF RAILWAYS IN THE UNITED STATES. REPORT FOR YEAR ENDING JUNE 30, 1901.

NOTE.—The report embraced in this appendix is published as a separate document.

APPENDIX F.

PRELIMINARY REPORT OF THE INCOME ACCOUNT OF RAILWAYS IN THE UNITED STATES FOR THE YEAR ENDING JUNE 30, 1902.

NOTE.—The report embraced in this appendix is published as a separate document.

APPENDIX G.

REVIEW OF RAILWAY OPERATIONS AND REGULATION IN THE UNITED STATES.

a. CHANGES IN FREIGHT TARIFFS.
b. STATE REGULATION OF RAILWAYS.
c. STATE TAXATION OF RAILWAYS AND OTHER TRANSPORTATION AGENCIES.

NOTE.—The report embraced in this appendix is published as a separate document.

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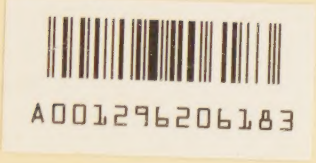
O

Lena Sallie Hartsuell one
this the 12th day of July 1904
Peter Pusher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